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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 JI LI, JIANHUI WU, BIN ZHANG,
DE PING ZHAO and KAI ZHAO,

4 Plaintiffs,

5 v.

14 CV 10242 (AJN)

6 ICHIRO SUSHI, INC., et al.,

7 Defendants.

8 -----x

9 ROBERTO HIDALGO,

10 Plaintiff,

11 v.

15 CV 414 (AJN)

12 ICHIRO SUSHI, INC., et al.,

13 Defendants.

14 -----x

April 23, 2019
9:10 a.m.

15 Before:

16 HON. ALISON J. NATHAN,

17 District Judge

18 APPEARANCES

19 TROY LAW

20 Attorneys for Plaintiffs Ji Li, Jianhui Wu, Bin Zhang, De
Ping Zhao and Kai Zhao (14 CV 10242)

21 BY: AARON SCHWEITZER

22 CILENTI & COOPER

23 Attorneys for Plaintiff Roberto Hidalgo (15 CV 414)

24 BY: PETER COOPER

25 LAW OFFICES OF DAVID YAN

Attorneys for Defendants Ichiro Sushi, New Ichiro Sushi
and Juhang Wang

BY: DAVID YAN

XUE & ASSOCIATES

Attorneys for Defendants Jian Ping Chen and Ichiro Asian
Fusion

BY: BENJAMIN XUE

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(In open court)

THE COURT: Good morning.

Mr. Yan called chambers saying that he overslept and indicated that he had no objection to our proceeding without him, and that Mr. Xue could do the first cross of the anticipated witness. So that's what we'll do.

And I just want to make sure, Mr. Wang, you understand, you're okay with that. Mr. Yan indicated he wants us to proceed. He said he would be here in about 15 minutes and we should get started and Mr. Xue can begin the cross-examination.

DEFENDANT WANG: Okay.

THE COURT: Sir, yes?

DEFENDANT WANG: Yes.

THE COURT: Thank you. All right.

Mr. Xue, Mr. Schweitzer, let me just ask, any preliminary matters to take up before we call our next witness?

MR. SCHWEITZER: No, your Honor.

THE COURT: Go ahead, Mr. Schweitzer.

MR. SCHWEITZER: I will call Bin Zhang.

THE COURT: Mr. Zhang can come forward.

Are you able to speak and understand English?

MR. SCHWEITZER: There's an interpreter.

THE COURT: The interpreter may come forward. Thank you.

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Zhang - Direct

1 BIN ZHANG,

2 called as a witness by the Plaintiff,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SCHWEITZER:

6 THE COURT: Would the interpreter please state her
7 name.

8 THE INTERPRETER: Phanessia Liao, Mandarin
9 interpreter.

10 THE COURT: Thank you. And your language is?

11 THE INTERPRETER: Mandarin interpreter.

12 THE COURT: And how long have you been interpreting
13 between Mandarin and English?

14 THE INTERPRETER: 25 years.

15 THE COURT: Have you previously been qualified as a
16 Mandarin to English interpreter in state or federal court?

17 THE INTERPRETER: Yes.

18 THE COURT: Counsel, any objection to any qualifying
19 Ms. Liao as a Mandarin to English interpreter?

20 MR. XUE: No.

21 THE COURT: All right. I do deem her so qualified and
22 I will ask my deputy to administer the interpreter oath.

23 (Interpreter sworn)

24 THE COURT: Thank you. Mr. Schweitzer, you may
25 proceed.

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Zhang - Direct

1 MR. SCHWEITZER: Thank you, your Honor.

2 May I approach?

3 THE COURT: What are you showing?

4 MR. SCHWEITZER: His declaration.

5 THE COURT: Which is marked as?

6 MR. SCHWEITZER: That would be Exhibit 19.

7 THE COURT: So Plaintiff Exhibit 19.

8 BY MR. SCHWEITZER:

9 Q. Mr. Zhang, you have in front of you what has been marked as
10 Plaintiff's Exhibit 19. Do you recognize that document?

11 A. I don't recognize it.

12 Q. Could you turn to the last page for me, please.

13 Does your signature appear on that document?

14 A. Yes, yes.

15 Q. And did you sign that document?

16 A. Yes.

17 Q. When did you sign that document?

18 A. February 4, '19.

19 Q. And on that date, was that document interpreted for you?

20 A. Yes.

21 Q. Between February 4 and today, did you have an opportunity
22 to review that document?

23 A. No.

24 Q. Is there anything in that document you want to clarify or
25 change?

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Zhang - Direct

1 A. No.

2 THE COURT: So Mr. Zhang, this declaration is being
3 submitted as your testimony in the trial today. Do you
4 understand that?

5 THE WITNESS: Yes.

6 THE COURT: And that means that if anything in this
7 document is false, you're submitting it under the penalty of
8 perjury. Do you understand that?

9 THE WITNESS: Yes.

10 THE COURT: And so your review of this document before
11 you signed it, are you comfortable with everything that is
12 contained in this document and prepared to swear to its truth?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 MR. SCHWEITZER: In that case I ask that plaintiff's
16 Exhibit 19 be admitted into evidence as Mr. Zhang's direct
17 testimony.

18 THE COURT: Objection?

19 MR. XUE: No objection.

20 THE COURT: And are any exhibits coming in via the
21 declaration?

22 MR. SCHWEITZER: No, your Honor.

23 THE COURT: Plaintiff's Exhibit 19, the affidavit of
24 Bin Zhang, signed on February 4, 2019, is admitted as the
25 direct testimony of Mr. Zhang.

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Zhang - Cross

(Plaintiff's Exhibit 19 received in evidence)

THE COURT: Mr. Xue.

MR. XUE: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. XUE:

Q. Mr. Zhang, what's your home address?

A. Flushing, 14441 28 Avenue.

Q. Is there an apartment number?

A. No, it's a house.

Q. When did you start work for Ichiro Sushi at Manhattan
Second Avenue?

A. 2012, May.

Q. And when did you stop working?

A. 2013 August.

Q. And during your employment, who was your boss.

A. There's a big boss and a small boss, and one is a man, one
is a woman.

Q. Who is this big boss?

A. The big boss is the woman, but she's not here.

Q. Was she here yesterday?

A. No, yesterday she wasn't here, not that one.

Q. So the one who testified first yesterday was not your boss,
right?

A. Not the boss, but I recognize her.

Q. You said the big boss is a lady and there is a small boss,

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Zhang - Cross

1 who is the small boss?

2 A. Mr. Wang, that's the small boss.

3 Q. So besides the lady boss and Mr. Wang, do you have any
4 other boss?

5 A. That I don't know.

6 Q. During your employment, to your knowledge, in this
7 restaurant, who had the power to hire or fire employees?

8 A. The person who we are in contact with are these two people,
9 the woman boss and this boss, and the small boss.

10 Q. And who has the power to supervise any employees work
11 during your employment?

12 A. These two people.

13 Q. And who has the power the set your rate of pay, manner of
14 pay, and give you pay?

15 A. Those two people.

16 Q. And during your employment, was there any record kept like
17 your time record, pay record kept during your employment, to
18 your knowledge?

19 A. No.

20 Q. So you do not have the knowledge who kept any employment
21 records, is that correct?

22 A. Correct, we don't have any of those.

23 Q. As you sit here today, do you know what's the name of this
24 lady boss?

25 A. We don't know, we just call her the boss. I don't know the

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Zhang - Cross

1 name.

2 Q. Do you know the daughter of this lady boss?

3 A. I'm not sure, but everybody say it's Li Jing, I'm not sure,
4 but I'm not sure.

5 THE COURT: Just want to pause to note that Mr. Yan
6 has graced us with his presence.

7 Mr. Yan, my law clerk told me that you called
8 chambers, indicated that you had overslept, and indicated that
9 you had no objection to our proceeding with putting in the
10 direct declaration of Mr. Zhang and Mr. Xue starting with his
11 cross-examination, which has been going on for about five
12 minutes.

13 MR. YAN: That's accurate, your Honor.

14 THE COURT: Thank you.

15 MR. XUE: Let me repeat my question.

16 BY MR. XUE:

17 Q. If you know, you know, if you don't know, it's okay. Do
18 you know the daughter -- the name of the daughter of this lady
19 boss?

20 A. I'm not sure, they say it's Li Jing, L-I J-I-N-G.

21 THE COURT: Sorry just a moment. You said they say
22 it's Li Jing, who is "they?"

23 THE WITNESS: The people that work together.

24 THE COURT: The people that work in the restaurant,
25 you mean?

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Zhang - Cross

1 THE WITNESS: Yes, correct.

2 BY MR. XUE:

3 Q. Do you know a person with the name Hui Chen, H-U-I
4 C-H-E-N?

5 A. I don't know. Maybe that's the female boss, maybe that's a
6 possibility.

7 Q. And as you sit here today, do you know who is the person
8 with the name Jian Ping Chen, J-I-A-N P-I-N-G C-H-E-N?

9 A. I don't know. I don't know this name, but I'm sitting here
10 yesterday I find out about this yesterday.

11 Q. So yesterday was the first time you ever in your life heard
12 about this name, is that correct?

13 A. Yes, correct.

14 Q. And during this four years litigation no one ever mentioned
15 this name to you until yesterday, is that correct?

16 A. Correct, I never heard of this name.

17 Q. Mr. Zhang, do you understand during this course of this
18 litigation there was complaint filed in this case?

19 A. Yes.

20 Q. And do you understand you also submit affidavit in this
21 litigation during the litigation in connection with this trial?

22 A. Yes.

23 Q. And do you understand when you submitted affidavit, when
24 you signed your name to the affidavit, you are subject to the
25 penalty of perjury?

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Zhang - Cross

1 A. Yes.

2 Q. But if someone did not translate something to you and you
3 don't know what's on the document -- withdrawn.

4 I want you to be honest, if a document was not
5 translated to you and then if you don't know the content of the
6 document, I want you to tell me. Is that okay?

7 MR. SCHWEITZER: Is there a question here?

8 THE COURT: I have a lot of questions, Mr. Schweitzer.
9 Overruled.

10 A. Yes.

11 MR. XUE: Your Honor, I would like to show witness
12 Defendant's Exhibit G.

13 THE COURT: Defendant's Exhibit G.

14 MR. XUE: It's dated November 9, 2018.

15 THE COURT: Okay.

16 Q. Sir, I direct your attention to the last page of this
17 affidavit. Do you see your signature here?

18 A. Yes, yes.

19 Q. Do you recognize -- do you recall whether you signed
20 affidavit in November 2018?

21 A. I think I signed this in the law office.

22 Q. Did anyone translate this document to you word for word?

23 A. Yes, yes.

24 Q. Is the information set forth in this document based on your
25 personal knowledge?

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Zhang - Cross

1 A. Yes.

2 Q. Did you know in this document Jian Ping Chen's name was
3 mentioned numerous times?

4 A. That I'm not clear, I just know that we are suing this
5 store or the shop.

6 Q. So is it correct to say when this document was presented to
7 you for signature, no one tell you Jian Ping Chen's name was on
8 this document?

9 A. I cannot remember, but I do know that we are suing this
10 store, shop or restaurant.

11 Q. So because you don't know who Jian Ping Chen is, you do not
12 know whether she was married or not on November 2018 or before
13 November 2018, right?

14 A. I don't know.

15 Q. And you do not know her husband's name or her daughter's
16 name, right?

17 A. I don't know.

18 Q. Jian Ping Chen is not a person who gave you pay who you
19 just testified there was serve as lady boss in the restaurant,
20 right?

21 A. No, she's not the one who paid me salary.

22 Q. So I direct your attention to paragraph five of this
23 affidavit. There's a statement said Ichiro New York was owned
24 and operated by defendant Hui Chen and Jian Ping Chen, do you
25 see that on the first sentence of paragraph five?

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Zhang - Cross

1 Do you see that?

2 Let me put it another way. Did anyone ever explain to
3 you you are signing a statement that said Hui Chen and Jian
4 Ping Chen owned Ichiro New York?

5 A. I don't know the general -- I don't know in general we are
6 suing the store. We only worked there, I don't know who is the
7 big boss, small boss.

8 Q. Did anyone tell you you are also signing this statement
9 containing your own statement based on representation you have
10 personal knowledge Hui Chen and Jian Ping Chen are husband and
11 wife?

12 A. I don't know. I only worked there. I don't really
13 understand that.

14 Q. Where did you work in November 2018.

15 A. 2018, I was in New Jersey.

16 Q. When you signed this affidavit, was this signature page
17 emailed or faxed to you and you signed it in New Jersey?

18 Let me rephrase it.

19 Was the signature page on this document sent to you in
20 New Jersey?

21 A. No, I went to the law office.

22 Q. If someone tell you that you are signing a statement saying
23 Jian Ping Chen and Hui Chen are husband and wife, would you
24 have signed it?

25 MR. SCHWEITZER: Objection it, calls for speculation.

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Zhang - Cross

THE COURT: Overruled.

A. I know they're the boss of Ichiro, and then I can sign that.

Q. But in November 2018, you did not know who are the boss of Ichiro, right?

A. The person here, Mr. Wang is boss one.

Q. And another lady boss but no one else, right?

A. Yes, yes, I only know those two.

MR. XUE: Your Honor, I move for the admission of Exhibit G, Defendant's Exhibit G.

MR. SCHWEITZER: No objection.

THE COURT: Defendant's Ichiro Asian Fusion Exhibit G is admitted.

(Defendant's Exhibit Ichiro Asian Fusion G received in evidence)

Q. I direct your attention to Plaintiff Exhibit 19, the declaration you submitted in connection with this trial. This document was signed on February 4, 2019, is that correct?

A. Yes.

Q. And in that time you don't know what's the lady boss name, right?

A. I don't know.

Q. And at that time you don't know who is Jian Ping Chen, right?

A. I don't know.

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Zhang - Cross

1 Q. And you have no idea what's the relationship between Ichiro
2 on Second Avenue and Ichiro in White Plains, right?

3 A. I know I -- I heard it from the workers.

4 Q. I direct your attention to paragraph six of this document.
5 In the middle there's a statement: Jian Ping Chen, who I
6 called lady boss. Do you see that?

7 Do you see that?

8 A. I don't know their exact names, I just know there's a
9 female boss and a male boss. I'm only suing the store, the
10 shop.

11 Q. Which store are you talking about?

12 A. Ichiro.

13 Q. Where is this store's location?

14 A. Second Avenue, Manhattan.

15 Q. So to your knowledge, in this lawsuit who are you suing in
16 this lawsuit?

17 A. The boss.

18 Q. Who is this boss you're referring to? Is this the lady
19 boss you're referring to?

20 A. Female boss and the small boss.

21 Q. So you're suing two individuals, right?

22 A. Yeah, you only have contact with these two bosses.

23 Q. And you are also suing the store on Second Avenue, right?

24 A. Yes.

25 Q. Are you suing anyone else?

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Zhang - Cross

1 A. I don't know the details. I'm not clear on the details. I
2 only worked there. To protect my right, I'm suing Ichiro, the
3 store. I don't know how many bosses.

4 Q. Let me ask you this way, during this four years litigation
5 or actually -- four years, did anyone ever tell you you are
6 suing any entity or individuals besides the two individuals,
7 one lady boss, one Mr. Wang, and Ichiro store on Second Avenue?
8 Did anyone ever tell you you are suing anyone else?

9 A. No, no.

10 Q. So you did not know -- there is language here on paragraph
11 six set forth lady boss name as Jian Ping Chen, right?

12 MR. SCHWEITZER: Asked and answered.

13 THE COURT: Overruled.

14 A. I just learned of this name, I don't know the female boss'
15 name.

16 Q. In paragraph eight of this declaration affidavit did you
17 know it contained the language saying Jian Ping Chen is the
18 wife of Hui Chen and during your employment Jian Ping Chen
19 worked as cashier and telephone hostess at Ichiro Sushi? Did
20 you know there is such language in this declaration?

21 A. That I don't know.

22 Q. I direct your attention to paragraph ten of your
23 declaration. Did you know in this paragraph it contained the
24 statement Jian Ping Chen kept working as manager in Ichiro
25 Sushi in the same role and for the same times --

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Zhang - Cross

1 MR. XUE: Withdrawn, your Honor.

2 Q. Let me read the entire statement. Do you know in the
3 statement you signed it contained a statement that said Jianhui
4 Wang became the owner of Ichiro Sushi in the summer of 2013
5 towards the end of my first period of employment, but Hui Chen
6 and Jian Ping Chen kept working as managers at Ichiro Sushi in
7 the same roles and for the same times they did before the
8 transfer. Did you know there is such statements contained in
9 your declaration?

10 A. This I know, this boss came in later.

11 Q. That was not my question. Let me rephrase it for you.

12 Do you -- as you sit here today, do you believe the
13 lady who came to testify first in this case continue to work as
14 manager after Ichiro Sushi was sold to Mr. Wang in 2013?

15 A. Yes.

16 MR. XUE: I know there's -- Jian Ping Chen name was
17 not translated, instead --

18 THE COURT: Ask the question again.

19 MR. XUE: I ask the question again. It was mentioned
20 lady boss.

21 Let me rephrase. I'm sorry if my question is to long
22 for you, I apologize.

23 Q. Did the lady who come to testify yesterday ever work as
24 manager for Ichiro Sushi on Second Avenue?

25 A. That I don't know.

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Zhang - Cross

1 Q. I direct your attention to paragraph 12 on this
2 declaration. It says Li Jing is the daughter of Hui Chen and
3 Jian Ping Chen. Do you see that?

4 A. That woman is not the woman from the store. We didn't
5 know, it's not -- it's not the same name.

6 Q. Who is that woman? You said "that woman," who is that
7 woman you are referring to?

8 A. Are you talking about the female boss from the store?

9 Q. No, I'm talking about the lady who testified yesterday.

10 A. That's not our female boss. That's not the same person
11 that works in the store.

12 Q. And you don't know, the lady who testified yesterday,
13 whether she has a daughter or she has a son or she has any
14 children, right?

15 A. I don't know.

16 MR. XUE: No more questions, your Honor.

17 THE COURT: I have a question. Mr. Zhang, when we
18 started this morning, I asked you to confirm that everything in
19 this February 4th, 2019 declaration was true and accurate. Do
20 you remember that?

21 THE WITNESS: Yes.

22 THE COURT: But Mr. Xue just walked you through a
23 number of places where you seemed to not know what was
24 contained in the February 4th, 2019 declaration. Was this
25 declaration translated for you?

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Zhang - Cross

1 THE WITNESS: Yes, yes. But I don't know if this
2 woman is Jian Ping Chen, I don't know if that's the same name.

3 THE COURT: Then why did you swear to this Court that
4 the lady boss' name was Jian Ping Chen in the declaration?

5 THE WITNESS: I know the female boss Jian Ping Chen,
6 but it's not the same lady that was here yesterday.

7 THE COURT: So how do you know the lady boss that
8 you're referring to is named Jian Ping Chen?

9 THE WITNESS: We work in the same store.

10 THE COURT: Earlier in your testimony today you said
11 you did not know her name. So which is it, you know her name
12 or you don't know her name?

13 THE WITNESS: Yesterday I don't know the name, I don't
14 know, it's not the same person.

15 THE COURT: Do you know what evidence is contained in
16 this declaration, the February 4th, 2018 declaration that you
17 submitted as your testimony today?

18 THE WITNESS: I know.

19 THE COURT: So you swear under the penalty of perjury
20 that: I called lady boss Jian Ping Chen.

21 THE WITNESS: If she was that -- the same woman, then
22 she's Jian Ping Chen.

23 THE COURT: The question is what do you know. Do you
24 know her name?

25 THE WITNESS: I don't know. I don't know.

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Zhang - Cross

1 THE COURT: In your declaration you say that you know
2 her name. That's false.

3 THE WITNESS: We don't know if this boss is Jian Ping
4 Chen.

5 THE COURT: Okay. The problem is the declaration is
6 supposed to be your knowledge and your testimony, and I'm not
7 confident that it is based on what you said. I'm trying to
8 understand what you actually know. That's the question.

9 For everyone who is going to testify, that's the
10 question. Okay?

11 THE WITNESS: Could you repeat that? I don't
12 understand.

13 THE COURT: We'll move on.

14 Mr. Yan.

15 MR. YAN: Yes, your Honor.

16 CROSS-EXAMINATION

17 BY MR. YAN:

18 Q. Good morning, Mr. Zhang. My name is David Yan. I
19 represent New Ichiro Sushi and Juhang Wang sitting at the table
20 in the courtroom.

21 Is your declaration dated November 29, 2018, there was
22 just admitted completely true and accurate?

23 THE COURT: You're asking about Plaintiff's Exhibit G?

24 MR. YAN: G.

25 THE COURT: Which is the November --

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Zhang - Cross

1 MR. YAN: 29, 2018.

2 THE COURT: You can --

3 MR. YAN: That's already there.

4 THE COURT: Go ahead, Mr. Yan, you can show it to him.

5 MR. YAN: Ms. Interpreter, could you interpret my
6 question to him?

7 A. Yes.

8 Q. I direct your attention to paragraph 13, you refer to
9 Juhang Wang as James Wang, is that correct?

10 A. Boss Wang.

11 Q. Do you know who was James Wang?

12 A. I don't know, I just call him little boss.

13 Q. Declaration named someone as James Wang, do you have the
14 personal knowledge about this person?

15 A. Boss Wang.

16 Q. Answer my question, do you know the person named as James
17 Wang?

18 A. I don't know James Wang.

19 Q. If you did not know who was James Wang, why did you call
20 Juhang Wang as James Wang in your declaration signed on
21 November 29, 2018?

22 A. Boss Wang, just boss Wang.

23 Q. In your declaration you call someone James Wang, if you
24 knew James Wang yourself?

25 A. I know boss Wang, this is boss Wang.

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Zhang - Cross

1 Q. Boss Wang, James Wang is the same person?

2 A. That I'm not sure.

3 Q. Let me direct your attention to paragraph eight of your
4 declaration of November 29, 2018. You said James Wang was the
5 manager of Ichiro New York. Was that accurate?

6 A. If this is the person, then it's the true person.

7 Q. I'm asking you the name, you named somebody as James Wang.
8 Did you ever go to James Wang when you were employed by Ichiro
9 Sushi in the past?

10 A. See, when we worked there, the workers, we don't know the
11 boss's name, we just know this is the boss. The person here is
12 the boss. The boss will not tell their name.

13 Q. If you did not know the boss name, why did you provide
14 James Wang, this name in your declaration dated November 29,
15 2018?

16 A. As workers there we say this Wang is the boss at Ichiro New
17 York, we worked for them.

18 Q. Anywhere in your declaration are either dated November 2,
19 2018 or your trial declaration dated February 4, 2019, you
20 named somebody boss Wang in your declaration?

21 A. Yes, yes.

22 Q. Can you tell us where in your declaration you called the
23 boss Wang?

24 A. Can this be it, James Wang?

25 Q. So James Wang is the boss?

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Zhang - Cross

1 A. And this.

2 Q. So your declaration on November 29, 2018, was not so
3 accurate, correct?

4 A. It's accurate. We are suing the boss of Ichiro but we
5 don't know their names.

6 Q. When you signed your declaration on November 29, 2018, were
7 you advised that you were supposed to provide a declaration
8 complete and accurate to the truth of the fact.

9 A. Yes, I know.

10 Q. If you knew that, why did you -- you called somebody James
11 Wang as your manager or owner of the restaurant and now you did
12 not understand who James Wang was?

13 A. We know the boss's name is Wang but we don't know the name,
14 but we know the boss name is Wang.

15 Q. Did you ever question this declaration who was James Wang
16 when you signed this declaration?

17 A. No, I didn't.

18 Q. Were you supposed to ask when you signed the declaration if
19 you did not understand the declaration?

20 A. The lawyer told me this is the boss of Ichiro, that's
21 enough for me, because all I do is I want to sue the boss of
22 Ichiro.

23 Q. And directing your attention to your trial declaration
24 dated February 4, 2019, paragraph 10, you said Juhang Wang
25 became owner of Ichiro Sushi in the summer of 2013. How did

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Zhang - Cross

1 you know that?

2 A. He came to manage and paying salary to us.

3 Q. Do you understand owner and manager just different?

4 A. This I know.

5 Q. So my question to you how did you know Mr. Wang, the person
6 sitting here, became the owner of the Ichiro Sushi restaurant
7 in the summer of 2013?

8 A. Because he start managing and give us our salary.

9 Q. Do you understand what was the meaning of owner?

10 A. I know owner.

11 Q. Tell us what's the meaning of owner to you.

12 A. The boss of the store.

13 Q. Did anyone in the store tell you Mr. Wang became owner in
14 summer of 2013?

15 MR. SCHWEITZER: Objection.

16 THE COURT: Overruled.

17 A. All the workers know because he's the one that give out the
18 salary, the pay.

19 Q. When you receive a salary, did you have to sign a paper?

20 A. No, at that time we don't have to sign anything, it just in
21 an envelope.

22 Q. And how much was in the envelope when you receive it?

23 A. Are you talking about the whole month?

24 Q. I don't know. You tell us if you know.

25 A. 500.

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Zhang - Cross

1 Q. You did not have to sign when you received the payment?

2 A. No.

3 Q. Did you ever have to sign anything to the book when you
4 received a payment?

5 A. He put some English word in there and then we signed.
6 Later on, that's later on.

7 Q. What do you mean later on?

8 A. Later on, this boss Wang brings a notebook, come over and
9 say sign your name in English and things -- the words are in
10 English so we don't know, we just sign and then he took it
11 away.

12 Q. And when you signed it your name in the notebook, how many
13 names you would see in the notebook?

14 THE INTERPRETER: How many -- can you repeat?

15 MR. YAN: Name.

16 THE COURT: You're asking how many names did he see in
17 the notebook?

18 MR. YAN: Yes.

19 A. I can't see.

20 Q. So you only saw your own name in the notebook when you
21 signed your name in the notebook?

22 A. Yes, I only signed my name.

23 Q. And during the time when you worked in the restaurant, how
24 many person work with you in any particular time?

25 A. Yes, those over there together, and the amigo from

J4NTLI1

Zhang - Cross

1 yesterday.

2 Q. Let me ask the question again. For example, in the summer
3 2013, how many delivery persons other than you worked with you?

4 A. Three.

5 Q. So besides you, there were four -- there were three other
6 people who did delivery who worked with you during the summer
7 of 2013?

8 A. We do delivery together.

9 Q. Can you name the other three delivery person's name?

10 A. They're there. They're sitting there.

11 Q. I know they're there.

12 THE COURT: Pointing to the people in the courtroom.

13 THE WITNESS: Correct, correct.

14 Q. There were three persons sitting in the back of this
15 courtroom worked with you in the summer of 2013?

16 A. When I was working there, they were working with me.

17 Q. And was there anyone else who was not in this courtroom
18 also worked with you in the summer of 2013 who also worked in
19 the restaurant to make delivery?

20 A. Yes, yes.

21 Q. Can you tell us what's his name?

22 A. Li Ji went back to China.

23 Q. And were you aware, in the summer of 2013, there was
24 construction for the Second Avenue subway?

25 MR. SCHWEITZER: Relevance.

J4NTLI1

Zhang - Cross

THE COURT: Overruled.

A. I'm not sure. We don't know this kind of stuff.

Q. Mr. Zhang, at the time in the summer 2013, how many sushi chef worked in the sushi bar, if you noticed that?

A. I think it's four.

Q. When you say there were four, your testimony was based on personal knowledge or based on speculation?

A. My personal knowledge.

Q. Were you aware in the summer of 2013 the business of the restaurant was down significantly due to the construction of Second Avenue subway?

A. Not a lot, the business was not bad.

Q. And how did Mr. Wang, boss Wang, we call boss Wang here, manage your work when you worked in the Ichiro Sushi?

A. He scheduled our work.

Q. Anything else?

A. And he pays us.

Q. I'm sorry?

A. And he pays us.

Q. Anything else?

A. That's it.

Q. When did you start working in Ichiro Sushi?

A. 2012.

Q. What was your hours in May 2012?

A. From 4:00 p.m. to 11:00 p.m.

J4NTLI1

Zhang - Cross

1 Q. Was your hours ever changed?

2 A. Yes, five days is this, and then one day is from 11 to 11.

3 Q. After your hours was set up in May 2012, was your hours
4 ever changed?

5 A. No.

6 Q. If your hours was never changed, how did Mr. Wang, the boss
7 Wang here, need to schedule your work?

8 A. He arranged for delivery.

9 Q. Yet your hours was already there, why didn't he, Mr. Wang,
10 need to schedule work again if your hours was never changed?

11 MR. SCHWEITZER: Asked and answered.

12 THE COURT: Overruled.

13 A. He arranged for our work as well.

14 MR. YAN: I just overheard that, if you translate
15 completely.

16 THE INTERPRETER: Sorry, Judge, I need to clarify, the
17 accent, I don't understand.

18 THE COURT: Go ahead.

19 A. We also have to pack the sauce and add the sodas and all
20 that, we have to do those works, he had to manage for those
21 work.

22 Q. And in 2012, May 2012, were you supposed to do this work?

23 A. Yes.

24 Q. And was your task to do this work ever changed during your
25 employment at the restaurant?

J4NTLI1

Zhang - Cross

1 A. No, it's the same.

2 Q. If it was the same, why did Mr. Wang here direct you to do
3 the work you just mentioned to us?

4 A. He's the boss, he has to schedule us for the work.

5 Q. Have you ever received payments from nighttime cashier?

6 A. No payment.

7 Q. And Hui Chen, as the manager in the restaurant, even after
8 you said that Juhang Wang became the owner of the restaurant in
9 the summer of 2013, tell us how did Hui Chen and Jian Ping Chen
10 manage your work in the restaurant?

11 A. The female boss managed the front, picks up phone calls and
12 managing the desk, the restaurant in the front.

13 Q. How did Hui Chen and Jian Ping Chen manage your work?

14 A. When the delivery comes, an order comes, and then send us
15 to do delivery.

16 Q. Mr. Zhang, in your trial declaration dated February 4,
17 2019, you said that Hui Chen and Jian Ping Chen kept working as
18 managers at Ichiro Sushi in the same roles and for the same
19 times they did it before the transfer in the paragraph ten of
20 your declaration. Tell us how did they manage your work
21 schedule and the payments in the same role and for the same
22 time they did it before.

23 A. This has not changed.

24 THE COURT: Mr. Yan, how much longer with the witness?

25 MR. YAN: I used about -- almost finished.

J4NTLI1

Zhang - Redirect

1 THE COURT: Okay.

2 Q. Have you ever worked for New Ichiro Sushi?

3 A. No.

4 MR. YAN: Judge, I finished my cross.

5 THE COURT: We'll take our mid-morning break. We'll
6 return in about ten minutes for the redirect. Thank you.

7 (Recess taken)

8 THE COURT: Mr. Zhang can return to the witness stand,
9 please.

10 Mr. Schweitzer, your redirect.

11 REDIRECT EXAMINATION

12 BY MR. SCHWEITZER:

13 Q. Mr. Zhang, on cross do you recall you were asked about
14 other deliveries by people who worked at the same time as you?

15 A. Yes.

16 Q. Are you familiar with a delivery person named Ji Li?

17 A. Yes, Li Ji.

18 MR. YAN: Your Honor, outside cross.

19 THE COURT: You did ask about other delivery people,
20 right?

21 MR. YAN: Oh, yes.

22 THE COURT: Overruled.

23 Q. When did Mr. Li's term of employment begin? When did he
24 start working?

25 A. I think August of 2012.

J4NTLI1

Zhang - Redirect

1 Q. And to your knowledge, when did his term of employment end?

2 A. I think October of 2013.

3 Q. When did his workday begin?

4 MR. YAN: Objection, your Honor, that's outside the
5 scope of cross-examination.

6 THE COURT: Sustained.

7 Q. To your knowledge, what was his work schedule?

8 MR. YAN: Objection, your Honor.

9 THE COURT: Sustained.

10 MR. SCHWEITZER: Your Honor, he was asked about and
11 gave an answer about Ji Li on cross.

12 THE COURT: Therefore what? Therefore anything having
13 to do with Mr. Li is now within the scope?

14 MR. SCHWEITZER: Yes.

15 THE COURT: You're wrong about that, so you're
16 overruled. I also took that as a foundation objection
17 interpreted as both the lack of foundation and beyond the scope
18 objection, and on both grounds it is sustained.

19 Q. Who was the person who hired you to work for Ichiro Sushi?

20 A. What do you mean who hired me?

21 Q. Who was the individual who hired you?

22 A. The boss.

23 Q. Was it Mr. Wang or somebody else?

24 A. What do you mean? The boss.

25 Q. When you say "the boss," are you referring to Mr. Wang who

J4NTLI1

Zhang - Redirect

1 is seated at defense table or somebody else?

2 MR. YAN: Leading, your Honor.

3 THE COURT: What's the objection?

4 MR. YAN: Objection, leading.

5 THE COURT: I will allow it for this one because he
6 seemed to be seeking clarification of the question, but
7 Mr. Schweitzer, you will not ask leading questions. Thank you,
8 you may answer.

9 A. Boss Wang.

10 Q. How often was boss Wang present in the restaurant at Ichiro
11 Sushi?

12 A. Yes.

13 Q. How often was he present?

14 A. He's almost there every day.

15 Q. When he's not there, who is in charge?

16 A. The female boss.

17 Q. Did you earn tips at Ichiro Sushi?

18 A. Yes.

19 Q. Who was it who gave you your tips?

20 MR. YAN: Objection, outside the scope of
21 cross-examination.

22 THE COURT: You did ask who paid him, so overruled.

23 A. The boss.

24 Q. When you say "the boss," can you give the person's name?

25 A. Boss Wang.

J4NTLI1

Zhang - Redirect

1 Q. Was it boss Wang -- throughout your employment, did anyone
2 beside boss Wang give you your tips?

3 A. No.

4 Q. Did you recognize the person who testified first yesterday?

5 A. Yes.

6 Q. What, if anything, was her role at Ichiro Sushi?

7 A. That I'm not sure, I only saw her eating inside the
8 restaurant.

9 Q. I see. When you were working at Ichiro Sushi and you had
10 to address the boss, would you use their name or would you use
11 their title?

12 A. Just the title, boss.

13 Q. Did Mr. Wang have the same role at the restaurant
14 throughout your employment?

15 MR. YAN: Objection, your Honor, the leading question
16 again.

17 THE COURT: Overruled. I'll allow it.

18 A. Yes.

19 Q. And what was that role?

20 A. Boss.

21 Q. To your knowledge, did Mr. Wang report to anybody of
22 greater authority than him?

23 A. That I don't know.

24 Q. What was the role of the lady boss at Ichiro Sushi?

25 A. She answers the phones and she's also a waitress.

J4NTLI1

Zhang - Redirect

1 Q. Did the lady boss ever give you tasks to do?

2 A. When the boss is not there, she also asked.

3 Q. What tasks would she give you to do?

4 A. Package the sauce and the soda.

5 Q. And was the lady boss the same throughout her employment?

6 A. Yes.

7 Q. To your knowledge, did anybody ever substitute for her?

8 A. No.

9 Q. You mentioned signing a notebook when you received your
10 pay. Did you receive any piece of paper to keep when you
11 received your pay?

12 A. No, nothing else.

13 Q. And what, if anything, was written on that notebook that
14 you signed?

15 A. I don't know, it's in English, I cannot read it.

16 Q. Were there any numbers on it?

17 A. No, no numbers.

18 Q. What happened to the notebook after you signed it?

19 A. The boss take it away.

20 Q. When, if you remember, was the first time that you were
21 required to sign that notebook?

22 A. That I don't remember.

23 Q. Was it within the first -- withdrawn.

24 Approximately how soon after you were hired was the
25 first time that you were required to sign the notebook?

J4NTLI1

Zhang - Redirect

1 A. A long time, maybe a little over a year.

2 Q. To your knowledge, why were you -- why did you start being
3 required to sign a notebook?

4 A. That I don't know.

5 Q. Were you required to sign any piece of paper when you
6 received your tips?

7 A. No.

8 Q. Were you required to report your tips to the boss?

9 A. No, no.

10 Q. During the course of your employment, did there come a time
11 when Ichiro Sushi stopped operating?

12 A. No.

13 Q. To be clear, the restaurant operated continuously
14 throughout your employment?

15 A. Yes, yes.

16 Q. Was the restaurant ever renovated?

17 A. No.

18 Q. Was the kitchen equipment ever replaced?

19 MR. YAN: Objection, your Honor, outside the scope of
20 the cross-examination.

21 THE COURT: Overruled.

22 A. No.

23 Q. And when you received your pay, was it in cash or by check?

24 A. Cash.

25 Q. And what about when you received your tips, was that in

J4NTLI1

Zhang - Recross

1 cash or by check?

2 A. Cash.

3 MR. SCHWEITZER: Nothing further.

4 THE COURT: Mr. Cooper, anything?

5 MR. COOPER: Nothing, Judge, thank you.

6 THE COURT: Mr. Xue?

7 MR. XUE: No recross.

8 THE COURT: Mr. Yan?

9 MR. YAN: Yes.

10 RECROSS EXAMINATION

11 BY MR. YAN:

12 Q. Sir, you were hired by Mr. Wang when you first worked for
13 Ichiro Sushi?

14 A. At that time he was not there. Later on.

15 Q. But you just testified that you were hired by Mr. Wang when
16 you were first worked for Ichiro Sushi, correct?

17 A. He came later. When I start working he was not there yet.

18 Q. So you were not hired by Mr. Wang when you worked for
19 Ichiro Sushi, correct?

20 A. Oh, no, that's the female boss.

21 Q. Mr. Zhang, at the end of the day did you have to do
22 accounting with cashier in order to get your tips?

23 A. Yes.

24 Q. So you received tips from cashier, not from Mr. Wang,
25 correct?

J4NTLI1

Zhang - Recross

1 A. Sometimes from him, sometimes from the cashier.

2 Q. Did you do accounting with this boss Wang or with cashier
3 for your tips?

4 A. We have receipts, we take the receipts and sometimes we go
5 to the cashier. If the cashier is not there, then we go to the
6 boss.

7 Q. Was boss Wang a sushi chef or a cashier when you worked in
8 the restaurant?

9 A. The waitress or the cashier in the front is not there, then
10 we go look for the boss.

11 Q. How often is the waitress or the cashier was not there then
12 you have to do accounting with the boss Wang for your tips?

13 A. When you work in the restaurant for one year, of course,
14 there's going to be many times.

15 Q. At least you had done some accounting with cashier for
16 tips, correct?

17 A. Yes.

18 Q. So when you testified in responding to your counsel's
19 question you claim that you received tips from boss Wang and no
20 one else, that was not correct, right?

21 A. No, the tips, we take the receipt and get the money, but
22 the salary is paid by boss Wang.

23 Q. But in responding to your counsel's question about the
24 tips, you did not provide truthful answer, correct?

25 A. This is the truth answer. What truth answer?

J4NTLI1

Zhao - Direct

1 Q. Let me move on. You also respond to your counsel question
2 regarding whether Ichiro Sushi ever stopped operating you said
3 it was not -- it was never stopped operation, is that correct?

4 A. Yes.

5 Q. And were you aware there was another restaurant purchased
6 the business of Ichiro Sushi sometimes in September 2014?

7 A. That I don't know.

8 MR. YAN: Your Honor, I have no further questions.

9 THE COURT: All right. Nothing further, you may step
10 down.

11 THE WITNESS: Thank you.

12 THE COURT: Thank you. And Mr. Schweitzer, you may
13 call your next witness.

14 MR. SCHWEITZER: The next witness is De Ping Zhao.

15 DE PING ZHAO,

16 called as a witness by the Plaintiff,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SCHWEITZER:

20 MR. SCHWEITZER: May I approach?

21 THE COURT: Yes. Showing?

22 MR. SCHWEITZER: His declaration marked Exhibit 20.

23 THE COURT: Yes, Plaintiff's Exhibit 20. Go ahead.
24 That's the declaration dated February 4, 2018.

25 Q. Mr. Zhao, if you turn to the last page of the document that

J4NTLI1

Zhao - Direct

1 I put in front of you, which is marked for identification as
2 Plaintiff's Exhibit 20 --

3 A. Yes.

4 Q. -- is that your signature?

5 A. Yes.

6 Q. And did you sign that document?

7 A. Yes.

8 Q. What date did you sign that document?

9 A. I don't remember.

10 Q. Is there a date on that page?

11 A. In here?

12 Q. Yes.

13 A. Yes.

14 Q. And what is that date?

15 A. 2019, February 4.

16 Q. Is that the date you signed this document?

17 A. Yes.

18 Q. At the time you signed that document, was it translated for
19 you?

20 A. Yes, translated.

21 Q. And before today and after February 4th, were you given an
22 opportunity to review this document?

23 A. No.

24 Q. Between February 4th and today, was this document ever
25 translated for you?

J4NTLI1

Zhao - Cross

1 A. Only the day when I signed the document.

2 Q. Is there anything in this document you wish to clarify or
3 change?

4 A. No.

5 Q. Is there anything in this document you wish to correct?

6 A. No, no, nothing to correct.

7 MR. COOPER: At this time I ask that Plaintiff's
8 Exhibit 20 be entered into evidence as Mr. Zhao's direct
9 testimony.

10 MR. XUE: No objection.

11 MR. YAN: No objection, your Honor.

12 THE COURT: Plaintiff's 20, the affidavit of De Ping
13 Zhao dated February 4, 2019 is hereby admitted as the direct
14 testimony of Mr. Zhao.

15 MR. SCHWEITZER: Nothing further on direct, your
16 Honor.

17 THE COURT: Mr. Xue.

18 CROSS-EXAMINATION

19 BY MR. XUE:

20 Q. Good morning, Mr. Zhao, my name is Benjamin Xue and I
21 represent Asian Fusion, Inc.

22 THE COURT: No more entries.

23 Q. What's your home address, sir?

24 A. 4140 149th Street, Flushing.

25 Q. Is there an apartment number?

J4NTLI1

Zhao - Cross

1 A. 1F.

2 Q. What's your highest level of education?

3 A. Middle school.

4 Q. In China?

5 A. Yes.

6 Q. Do you read any English?

7 A. No English.

8 Q. When did you work for Ichiro Sushi on Second Avenue?

9 A. May of 2012.

10 Q. Until when?

11 A. June 30 of 2014.

12 Q. Do you know who you are suing in this case?

13 A. The boss of Ichiro, the big boss and the small boss.

14 Q. Who is the big boss?

15 A. The husband of the female boss.

16 Q. Do you know his name?

17 A. I'm not sure.

18 Q. Who is the small boss?

19 A. Boss Wang.

20 Q. So during this four years litigation, did anyone tell you
21 you are also suing other people in this case?

22 A. No.

23 Q. Do you know who is Jin Li, J-I-N L-I?

24 A. No.

25 Q. Do you know who is Jian Ping Chen?

J4NTLI1

Zhao - Cross

1 A. No, because I don't speak English.

2 Q. Did you see the lady who testified in this case yesterday?

3 A. Yes.

4 Q. Is she your boss?

5 A. I don't know. I saw her.

6 Q. That wasn't my question. My question is: Is she your
7 boss?

8 A. I don't know who, I just know the female boss.

9 Q. And the female boss, is she the female boss you know?

10 A. No.

11 Q. During your employment, do you know who had authority to
12 hire or fire employee at Ichiro Sushi?

13 A. In the beginning was the female boss, then the little boss.

14 Q. I want you to testify based on your personal knowledge, I
15 don't want you to guess. Okay?

16 Who has the authority --

17 Do you know during your employment who had the
18 authority to supervise employees at Ichiro Sushi on Second
19 Avenue?

20 A. In the beginning only the female boss and then is the
21 female boss and the little boss.

22 Q. And do you know who had authority to set employee's pay and
23 method of pay?

24 A. In the beginning was the female boss and then is the female
25 boss and the small boss.

J4NTLI1

Zhao - Cross

1 Q. And do you know who had the authority to keep employment
2 records for employees when you were working at Ichiro Sushi on
3 Second Avenue?

4 A. In the beginning it's the female boss and then a female
5 boss and the small boss.

6 Q. As you sit here today, do you know the name of this female
7 boss?

8 A. I don't know.

9 Q. Do you know her husband's name?

10 A. I don't know.

11 Q. Do you know her daughter's name?

12 A. I don't know.

13 Q. Do you know the lady who testified yesterday, what's her
14 name?

15 A. I don't know.

16 Q. Do you know whether she's married?

17 A. I don't know.

18 Q. Do you know whether she has any children?

19 A. I don't know.

20 Q. Do you know whether she work between 2012 and 2014?

21 A. Who are you talking about?

22 Q. The lady who testified yesterday.

23 A. I saw her in the restaurant.

24 Q. But that wasn't my question, my question is do you know
25 whether she work between the time -- between the year 2012 and

J4NTLI1

Zhao - Cross

2014?

A. That I don't know.

Q. Sir, I direct your attention to Plaintiff Exhibit 20 your declaration in this case. I direct your attention to paragraph 6. When you signed this declaration or affidavit, did anyone tell you that you put down the statement that the female boss, the lady boss name is Jian Ping Chen?

A. The interpreter.

Q. Did you tell the interpreter that you don't know what's the female boss name?

A. Yes.

Q. Even though you told the interpreter that, did you know whether the statement was corrected in any way?

A. At that time they translated for me then I signed, that's it.

Q. But my question to you is -- let me ask you this way. When the document was first translated to you, was that the final document or it was a draft, to your knowledge?

A. In English it's the final.

Q. So to your knowledge, was there any correction made after the document was translated to you after you talked to the interpreter?

A. I don't remember.

Q. But you do remember you told them you don't know the female boss name, right?

J4NTLI1

Zhao - Cross

1 A. Correct.

2 Q. I direct your attention to paragraph 8, the first sentence,
3 it says Jian Ping Chen is the wife of Hui Chen. Do you see
4 that?

5 A. That I don't remember.

6 Q. Even as of today you have no idea who is Jian Ping Chen's
7 husband, right?

8 A. I don't know.

9 Q. So did anyone tell you this affidavit contained such
10 statement?

11 A. I don't understand what you mean by that.

12 Q. Did the interpreter tell you there is a statement saying
13 Jian Ping Chen is Hui Chen's wife in the affidavit you were
14 signing?

15 A. I don't remember. I don't remember.

16 Q. I direct your attention to paragraph 2 of this affidavit,
17 it says "I have personal knowledge of the matters stated
18 below," paragraph two, first page. Was this sentence
19 translated to you?

20 A. I don't understand what knowledge.

21 Q. Is this your first time ever someone told you that your
22 statement was signed with representation that's based on your
23 personal knowledge?

24 A. Yes.

25 Q. No one ever tell you this before, right?

J4NTLI1

Zhao - Cross

1 A. Yes.

2 Q. Did the lady who testified yesterday appear at Ichiro Sushi
3 Second Avenue every day when you were there?

4 A. No.

5 Q. I direct your attention to paragraph 8, the second to the
6 last sentence. It says, "During my employment --

7 THE COURT: Paragraph 7.

8 MR. XUE: Paragraph 8.

9 THE COURT: Sorry, thank you.

10 Q. "During my employment, Jian Ping Chen was present at Ichiro
11 Sushi restaurant almost every day I was there." Did you see
12 that statement?

13 A. I say that's the female boss.

14 Q. So this sentence was not -- is incorrect, this sentence was
15 not translated to you saying Jian Ping Chen was at Ichiro Sushi
16 restaurant almost every day, right?

17 A. I don't remember.

18 Q. If someone tell you a name Jian Ping Chen in
19 February 2018 -- 2019, would you tell this person that I have
20 no idea who you are talking about?

21 MR. SCHWEITZER: Objection, calls for speculation.

22 THE COURT: Overruled.

23 A. Yes.

24 Q. And the lady who testified yesterday never worked as a
25 manager in Ichiro Sushi, right?

J4NTLI1

Zhao - Cross

1 A. I saw her a few times. She picks up the phone calls, I
2 don't remember how many times.

3 Q. Are you sure you saw her picking up phone call at a
4 restaurant?

5 A. Yes, I did saw her.

6 Q. And have you ever talked to her?

7 A. No.

8 Q. My question to you is did the lady who testified yesterday
9 work as manager for a restaurant?

10 A. So many, I don't remember.

11 Q. What do you mean so many?

12 A. They changed managers all the time, I don't remember who is
13 the manager.

14 Q. During your employment, who were your managers?

15 A. So many, I don't remember.

16 Q. So you don't remember whether the lady who we saw -- did
17 the lady who testified yesterday, did she ever pay you?

18 A. No.

19 Q. Did she ever set your rate of pay?

20 A. No.

21 Q. Did she ever schedule your work hours?

22 A. No.

23 Q. During your employment, who set your rate of pay, method of
24 pay, work schedule, workload and tasks?

25 MR. SCHWEITZER: Objection to the compound question.

J4NTLI1

Zhao - Cross

1 MR. XUE: I could break it down if you want.

2 THE COURT: Go ahead.

3 Q. During your employment, who was the person who set your
4 rate of pay?

5 A. In the beginning it's the female boss, then the small boss
6 or little boss.

7 Q. So if someone tell you that you are signing a statement
8 Jian Ping Chen determined your rate of pay, you would not sign
9 it, right?

10 MR. SCHWEITZER: Calls for speculation.

11 THE COURT: Overruled.

12 A. Yes.

13 MR. XUE: Your Honor, I would like to show witness
14 Defendant's Exhibit H, which is -- actually not H, M --

15 THE COURT: M like --

16 MR. XUE: Mary, your Honor. It's an affidavit dated
17 September 3rd, 2015.

18 THE COURT: Defendant Ichiro Asian Sushi M.

19 Q. Sir, do you recognize this document?

20 A. I can't remember.

21 Q. I direct your attention to the last page on this document.
22 Is this your signature?

23 A. Yes.

24 Q. Do you recall you signing this statement in 2015 in
25 connection with this case?

J4NTLI1

Zhao - Cross

1 A. This is my signature.

2 MR. XUE: Your Honor, I move for the admission of
3 Defendant's Exhibit M.

4 MR. SCHWEITZER: No objection.

5 THE COURT: Defendant Ichiro Asian Fusion Exhibit M is
6 admitted.

7 (Defendant's Exhibit Ichiro Asian Fusion M received in
8 evidence)

9 BY MR. XUE:

10 Q. I direct your attention to paragraph five of this document.
11 It says Ichiro Second Avenue defendant Jian Ping Chen, known as
12 boss to me, used to manage and oversee the restaurant as well
13 as work at the sushi bar. Do you see that?

14 A. That I don't know.

15 Q. So you did not know -- is it correct you did not know there
16 is such statement in the affidavit you signed on November 15?

17 A. I don't remember.

18 Q. Sir, you are Chinese, right?

19 A. Yes.

20 Q. So for a lady boss, would you call lady boss "boss" or
21 "lady boss?"

22 A. The female boss is the boss, the big boss, when the big
23 boss is not here, the little boss will manage.

24 Q. Let me rephrase my question for you. Forget about your
25 restaurant. If you see a boss who is -- the gender of the boss

J4NTLI1

Zhao - Cross

1 is female, how would you refer to this person?

2 MR. SCHWEITZER: Calls for speculation.

3 THE COURT: Overruled.

4 A. Female boss, lady boss.

5 Q. So in 2015, on the day you signed this affidavit, did you
6 thought Jian Ping Chen is a male?

7 A. I don't remember.

8 Q. In the paragraph 6 of this affidavit there is a statement
9 says defendant Jian Ping Chen determined my rate of pay, work
10 schedule, workload and employment. Do you see that?

11 A. I just know that this is the female boss, I don't know
12 anything else.

13 Q. And so in 2015, you don't know the female boss name, right?

14 A. I don't know.

15 Q. So if -- did anyone tell you the name of the female boss in
16 2015?

17 A. I don't know, no.

18 Q. No, or you don't know?

19 A. No.

20 MR. XUE: I have no more questions.

21 THE COURT: All right. Let's take our lunch break.

22 It's 12:10, we'll resume in an hour at 1:10. Thank you.

23 (Luncheon recess taken)

24 (Continued on next page)

J4NTLI2

Zhao - Cross

AFTERNOON SESSION

(1:15 p.m.)

THE COURT: Are there matters to take up?

MR. COOPER: No.

THE COURT: I ask Mr. Zhao to come forward. And
Mr. Yan, your witness for cross-examination.

CROSS-EXAMINATION

BY MR. YAN:

Q. Good afternoon, Mr. Zhao. My name is David --

THE COURT: You don't have to do that, just questions.
Thank you.

Q. Do you know who is James Wang?

A. I don't know.

Q. You submitted an affidavit, declaration that's Exhibit M,
September 3rd, 2015.

I call your attention to your declaration made
November 28, 2018. Have you ever made a declaration?

THE COURT: What is that document?

MR. YAN: That's the document number 199-4. That's
also in their declaration of three issues, trial exhibits.

THE COURT: What letter? Is there a copy in front of
the witness?

Showing what's been marked for identification as
Defendant Asian Fusion Exhibit H, which appears to be the
November 28, 2018 declaration affidavit of Mr. Zhao. Go ahead.

J4NTLI2

Zhao - Cross

1 Q. In that declaration you --

2 THE COURT: Are you moving this into evidence?

3 MR. YAN: Yes.

4 THE COURT: Any objection?

5 MR. SCHWEITZER: No.

6 THE COURT: It is admitted. Go ahead.

7
8 (Defendant's Exhibit Ichiro Asian Fusion H received in
9 evidence)

10 BY MR. YAN:

11 Q. Sir, in that declaration, paragraph eight, you state that
12 James Wang was the manager of Ichiro New York, and who was this
13 James Wang?

14 A. I don't know the name.

15 Q. So why do you call Juhang Wang also name James Wang, also
16 known as James Wang?

17 A. I don't remember.

18 Q. Let me call your attention to your declaration made
19 February 4, 2019, paragraph ten. If you can compare your
20 paragraph ten with the paragraph ten of your co-worker Bin
21 Zhang?

22 THE COURT: Mr. Yan, I don't know that that's going to
23 be fruitful. If you want to make an argument to me about the
24 comparison between them, you can do that during closing. But
25 if you want to use your time, it will require, since they're in

J4NTLI2

Zhao - Cross

1 English, the interpreter to translate both, and then your point
2 is to ask the witness how those two paragraphs compare? Is
3 that what you want to do?

4 MR. YAN: I want to two allegations made in the
5 same -- no change in wordings were his personal statement or
6 somebody give to him to just sign it.

7 THE COURT: So asking him about somebody else's
8 declaration isn't helpful. Again, if that's how you want to
9 use your time, which is limited --

10 MR. YAN: I --

11 THE COURT: You see the point.

12 BY MR. YAN:

13 Q. In the summer 2013, did you work in the restaurant?

14 A. Yes.

15 Q. And do you know any other delivery person worked with you
16 in the summer 2013?

17 A. Yes.

18 Q. And who were they?

19 A. These are the restaurant people, and also Li Jin.

20 Q. Is it accurate to say that besides you there were four
21 other delivery person worked with you in the summer 2013 in
22 Ichiro Sushi restaurant?

23 A. Yes.

24 Q. And how many sushi chef worked in the sushi bar in the
25 summer 2013?

J4NTLI2

Zhao - Cross

1 A. Four or five, but I really don't remember.

2 Q. And have you ever seen the sushi bar when you worked in
3 Ichiro Sushi?

4 A. I saw them working.

5 Q. Were the sushi bar accommodate five sushi chefs inside the
6 sushi bar?

7 A. Approximately.

8 Q. What do you mean approximately?

9 A. About four or five.

10 Q. And how big was the sushi bar?

11 A. I can't really say. They can sit about four or five
12 people.

13 Q. Are you sure that you worked in Ichiro Sushi in the summer
14 of 2013?

15 A. Yes.

16 Q. When you worked in the rest -- when you start to work in
17 the Ichiro Sushi, who hired you?

18 A. The female boss.

19 Q. And at the time the female boss set up your schedule to
20 work?

21 A. Yes.

22 Q. Was your schedule ever changed?

23 A. I worked the night shift.

24 Q. Was your schedule when you work in the Ichiro Sushi
25 restaurant ever changed?

J4NTLI2

Zhao - Cross

1 A. Sometimes I worked four days a week, sometimes I worked six
2 days a week.

3 Q. Can you respond to my question? Was your --

4 THE COURT: That was responsive.

5 Q. -- ever changed?

6 THE COURT: Asked and answered.

7 Q. How did you know Mr. Wang sitting at the table here became
8 owner of Ichiro Sushi restaurant?

9 A. When he pays my salary.

10 Q. Other than he gave you the salary, did you have any
11 information about a change of ownership of the restaurant?

12 A. The sign up.

13 Q. When did you know?

14 A. He has a share.

15 Q. How did you find out he has shares?

16 A. They say that he's the little boss, the small boss and
17 there's also a big loss.

18 Q. Who said that to you?

19 A. Co-workers.

20 Q. Which co-worker told you that?

21 A. The workers that works inside the restaurant.

22 Q. Which one?

23 A. We work together, he's the one who pays our salary, so we
24 think that he's the boss.

25 Q. You just said that you heard it from someone else. Do you

J4NTLI2

Zhao - Cross

1 today have any name of the co-worker who told you Mr. Wang had
2 shares in Ichiro Sushi restaurant?

3 A. They say that he's the little boss or the small boss.

4 Q. Other than someone told you he was the little boss, how did
5 you find out he had a share of Ichiro Sushi restaurant?

6 A. At that time the co-workers say that he has shares.

7 Q. Again co-worker, what's the name of the co-worker who told
8 you Mr. Wang had a share of the Ichiro Sushi restaurant?

9 A. I can't remember.

10 Q. Can you tell us, what was your salary, wages in the
11 restaurant?

12 A. In the beginning, at 4 o'clock, it's 20, at 6 o'clock it's
13 25, and then when the little boss came, it increased to -- in
14 the beginning at 4 o'clock it's 15, when he came he increased
15 five dollars.

16 Q. Anything else?

17 A. No.

18 Q. When you say 4:00 p.m. 20, 6:00 p.m., 25 is the daily wages
19 or the weekly wages?

20 A. Daily.

21 Q. Other than these daily wages payments, do you receive --
22 did you receive any other compensations?

23 A. No.

24 Q. And was your declaration made on the February 4, 2019
25 accurate and complete about your compensation received from

J4NTLI2

Zhao - Cross

1 Ichiro Sushi restaurant?

2 A. Yes.

3 Q. Let me direct your attention to your declaration made on
4 August 18, 2015 in the docket number 54-3.

5 MR. YAN: Your Honor, I marked this one as defendant's
6 17.

7 THE COURT: So New Ichiro Sushi defendant number
8 Exhibit Number 17.

9 Q. Turn to the last page, signature page, is that your
10 signature?

11 A. Yes.

12 Q. Did you make that declaration?

13 A. What is it?

14 Q. Did you make that declaration?

15 A. Yes.

16 Q. And in paragraph 7 did you --

17 THE COURT: Do you want to move this into evidence
18 before you read from it?

19 MR. YAN: Yes, your Honor.

20 THE COURT: Any objection?

21 MR. SCHWEITZER: No, your Honor.

22 THE COURT: New Ichiro Sushi Defendant 17 is admitted.
23 (Defendant's Exhibit New Ichiro Sushi 17 received in
24 evidence)

25 BY MR. YAN:

J4NTLI2

Zhao - Cross

1 Q. Mr. Zhao, let me direct your attention to paragraph 7. In
2 that paragraph you said you received additional five dollars
3 compensation for used a motorcycle, correct?

4 THE COURT: What paragraph?

5 MR. YAN: Paragraph seven. Seven.

6 THE COURT: Seven?

7 MR. YAN: Yes.

8 THE COURT: It does not say that, or at least what you
9 just handed me does not say that.

10 You mean 17?

11 MR. YAN: 17, your Honor.

12 THE COURT: Okay. Why don't you ask again.

13 Q. So Mr. Zhao, you received additional five dollars for -- to
14 compensate your use of the motorcycle, right?

15 A. No, it's the salary, that's the salary for the day, it did
16 not specify about motorcycle.

17 Q. So your declaration in -- that in 2015 was not accurate?

18 A. At that time I tell the translator that, they increase five
19 dollars, for whatever reason they increase five dollars I don't
20 know.

21 Q. So your declaration in 2015 saying you received five
22 dollars a day, you did not know what was that but you signed
23 that declaration, is that your testimony?

24 A. No, it's true, but they increased five dollars, but what is
25 that five dollars for, I don't know.

J4NTLI2

Zhao - Cross

1 Q. But if that's true, then your declaration made on
2 February 4, 2019 is not complete and accurate, correct?

3 A. I did tell them that it increased five dollars but what is
4 that five dollars for, I don't know, I don't remember.

5 Q. However, you purposely omit the five dollars in your
6 declaration made on February 4, 2019, correct?

7 A. No, what I'm saying is that when he took over, he increased
8 five dollars, but what is that five dollars for, I don't know.

9 Q. Did you review your declaration dated February 4, 2019 with
10 your attorney before you signed this declaration?

11 A. After it was translated to me, I forgot.

12 Q. However, you made -- you testified to the Court and
13 responded to my question saying the declaration made on
14 February 4, 2019 was true, complete and accurate, is that not
15 true now?

16 A. Yes.

17 Q. So it's not completely correct?

18 A. It's complete.

19 Q. However, you omit five dollars stated you received the
20 compensation in your February 4, 2019 declaration, correct?

21 A. I told you I don't know the reason why it was increased,
22 that there was a five dollars increase, but as far as the
23 reason, I don't know.

24 Q. Mr. Zhao, why did you omit your compensation of five
25 dollars daily in your February 4, 2019 declaration?

J4NTLI2

Zhao - Redirect

1 A. I tell you the truth, I did get an increase of five
2 dollars, but as far as what is that for, I don't know.

3 Q. Is it accurate to say that you did not have the personal
4 knowledge when you signed your declaration on February 4, 2019?

5 MR. SCHWEITZER: Personal knowledge of what?

6 MR. YAN: Regarding the contents of the declaration in
7 general.

8 A. No information, but when they give me this, I signed it.

9 MR. YAN: Your Honor, I have no further questions.

10 THE COURT: Okay. Mr. Schweitzer.

11 REDIRECT EXAMINATION

12 BY MR. SCHWEITZER:

13 Q. You mentioned on cross that you worked the late shift,
14 right?

15 A. Yes.

16 Q. Was there also an early shift?

17 A. Yes.

18 Q. What were the hours of the late shift?

19 A. Sometimes it starts at four, sometimes it starts at six,
20 but it goes all the way after 12:30.

21 Q. What were the hours of the early shift, to your knowledge?

22 A. I'm not sure, ten, maybe.

23 Q. 10 o'clock until when?

24 A. I'm not sure, maybe until ten.

25 Q. Did all of the late shift workers work the same hours?

J4NTLI2

Zhao - Redirect

1 A. No, not the same hours.

2 Q. Did all the workers who worked in a particular day work the
3 same hours in that day?

4 A. Some works until 4 o'clock and leave at four.

5 Q. Do you recall who were the other delivery people who were
6 working alongside you?

7 A. Those.

8 Q. All four of them? Sorry, all three of them?

9 A. Yes.

10 Q. Anyone else?

11 A. And Li Ji.

12 Q. What shift did he work?

13 A. He's the morning shift, early shift.

14 Q. You testified on cross that you were aware of a big boss at
15 the restaurant, correct?

16 A. Yes.

17 Q. What was the big boss' role in the restaurant?

18 A. I don't understand.

19 Q. Let's put it this way, how often was the big boss present
20 in the restaurant?

21 A. Rarely.

22 Q. I didn't catch that, was that rarely?

23 A. Rarely.

24 Q. Approximately how often?

25 A. Maybe come once in every month or every two months.

J4NTLI2

Zhao - Redirect

1 Q. And when he came, how long did he stay?

2 A. I don't remember.

3 Q. When was the first time you saw him there?

4 A. 2012.

5 Q. About what month?

6 A. I don't remember.

7 Q. When was the last time you saw him there?

8 A. 2014.

9 Q. And when he was there, did he give you any tasks to do?

10 A. No.

11 Q. Did you observe him give anyone tasks to do?

12 A. I don't know.

13 Q. What, if anything, did you observe him doing when he was
14 there?

15 A. Just eat and drink wine.

16 Q. And you testified on cross that you knew there was a day
17 lady boss, correct?

18 A. Yes.

19 Q. How often was she present in the restaurant?

20 A. Every day, almost every day.

21 Q. And what would she do when she was present in the
22 restaurant?

23 A. She picks up the phone, she counts the money, and takes the
24 orders.

25 Q. Did she ever give you tasks to do?

J4NTLI2

Zhao - Redirect

1 A. In the beginning, yes, when the little boss, the small boss
2 came, she just go back to pick up the phone calls.

3 Q. So before the little boss came, what tasks would she give
4 you to do?

5 A. Delivery and miscellaneous.

6 Q. By miscellaneous, what do you mean?

7 A. Cut the cardboards fill up the sodas.

8 Q. And you mentioned that the big lady boss was there almost
9 every day. Was there times when she wasn't there?

10 A. I don't remember.

11 Q. Are you familiar with the lady who testified first
12 yesterday morning?

13 A. Yes.

14 Q. And you have seen her present in the Ichiro Sushi
15 restaurant?

16 MR. XUE: Objection, leading.

17 THE COURT: Sustained.

18 Q. How are you familiar with her?

19 A. She is in the front desk.

20 Q. What was she doing at the front desk?

21 A. She also picks up phone calls.

22 Q. Was she present at the same time the big lady boss was
23 present?

24 MR. XUE: Objection, leading.

25 THE COURT: Sustained.

J4NTLI2

Zhao - Redirect

1 Q. Was she -- who, if anyone else, was working the counter at
2 that time?

3 A. I don't remember. Many.

4 Q. How many times did you see the lady who testified first
5 yesterday working the counter?

6 A. I don't remember.

7 Q. And when the lady who testified yesterday was working the
8 counter, did she give you tasks to do?

9 MR. XUE: Objection, leading.

10 THE COURT: Sustained.

11 Q. What, if anything, did that lady say to you once she was
12 working the counter?

13 A. Nothing to say.

14 Q. What, if any, orders did she give you to do when she was
15 working at the counter?

16 MR. XUE: Objection.

17 THE COURT: Sustained.

18 MR. SCHWEITZER: May I ask why?

19 THE COURT: Asked and answered. What did she say to
20 you? Nothing.

21 MR. SCHWEITZER: I see.

22 THE COURT: You can't simply lead by asking the same
23 questions different way.

24 BY MR. SCHWEITZER:

25 Q. What, if anything, did you say to her?

J4NTLI2

Zhao - Redirect

1 A. When there's tips enter in the computer, there's receipts,
2 then we talk, and nothing else.

3 Q. When you report your tips to whoever was working the
4 cashier --

5 MR. XUE: Objection, leading.

6 THE COURT: Sustained.

7 Q. How would you receive -- how would you make sure your boss
8 knew how much money you got in the tips?

9 A. The customer give us the receipt and then it's entered into
10 the computer, then we use the paper, the receipt, to go and
11 exchange for money.

12 Q. And with whom would you exchange the receipt for money?

13 A. Whoever is in the front desk, I give it to the front desk
14 person.

15 Q. Did any of the people present in the courtroom either
16 yesterday or today, present you with your tips?

17 A. Yes.

18 Q. Who?

19 A. Boss Wang. And also the woman that was here yesterday.

20 Q. During your employment at Ichiro Sushi, did Ichiro Sushi
21 ever stop operating or become closed to customers?

22 MR. YAN: Objection, outside scope of the
23 cross-examination.

24 THE COURT: Sustained.

25 Q. Did you work continuously from the time you were hired

J4NTLI2

Zhao - Redirect

1 until the time you left your employment at Ichiro Sushi?

2 A. I don't remember.

3 Q. Did you ever observe the interior of Ichiro Sushi being
4 redecorated?

5 MR. YAN: Objection.

6 THE COURT: Overruled.

7 A. Yes.

8 Q. When was that?

9 A. When the small boss, the little boss came, when he first
10 came it was redecorated.

11 Q. And when was that?

12 A. 2013.

13 Q. And what about the interior changed?

14 A. Yes.

15 Q. What specifically was changed?

16 MR. YAN: Objection as to outside scope.

17 THE COURT: Overruled.

18 A. I just mean the floor changed.

19 Q. Was the restaurant closed during that time?

20 A. No.

21 Q. Was that the only time you recall there being renovation to
22 the interior of Ichiro Sushi?

23 MR. YAN: Objection, leading.

24 THE COURT: Sustained.

25 MR. SCHWEITZER: That's fair, I will rephrase.

J4NTLI2

Zhao - Redirect

1 Actually, no, withdrawn.

2 MR. YAN: Objection.

3 THE COURT: Well --

4 MR. SCHWEITZER: To what, there's no question?

5 THE COURT: I don't know if the interpretation was of
6 my instructions. That's fine. If it was the question, we can
7 move on because I sustained the objection.

8 BY MR. SCHWEITZER:

9 Q. When you were first hired, who was it who paid your base
10 wage?

11 A. I don't understand, what do you mean by that, at the
12 beginning?

13 Q. Before Mr. Wang came to work for Ichiro Sushi, who paid you
14 your wage?

15 A. The female boss.

16 Q. And after Mr. Wang came to work for Ichiro Sushi, who
17 physically gave you your wage?

18 A. Boss Wang.

19 Q. And when you were given your base wage, how were you paid,
20 by cash or by check?

21 A. Cash.

22 Q. Were you given anything with your pay?

23 Were you given anything else with your pay?

24 A. No.

25 Q. When you received your pay, did you sign a notebook or

J4NTLI2

Zhao - Redirect

1 other -- did you sign a notebook?

2 MR. YAN: Objection, leading.

3 THE COURT: Sustained.

4 Q. What, if anything else, happened when you received your
5 pay?

6 A. I don't remember.

7 Q. During the course of your employment, did your wage rate
8 ever change?

9 MR. YAN: Objection. Leading question.

10 THE COURT: Overruled.

11 A. Yes.

12 Q. What did it start as and what did it change to?

13 A. 2013 when the small boss came I got an increase of five
14 dollars.

15 Q. Five dollars for what unit of time?

16 A. Every day there's an increase of five dollars.

17 Q. And why did you receive an increase of five dollars at the
18 time that Mr. Wang came to work for Ichiro Sushi?

19 A. Because I do more work and because I was cutting the
20 cardboards and adding -- and refill the soda.

21 Q. And who told you you would be receiving a five dollar per
22 day raise?

23 A. Boss Wang.

24 Q. And after he told you that, did you actually receive the
25 five dollars per day raise?

J4NTLI2

Zhao - Recross

1 A. Yes.

2 MR. SCHWEITZER: Nothing further.

3 THE COURT: Mr. Cooper?

4 MR. COOPER: Nothing for this witness, Judge.

5 THE COURT: Mr. Xue?

6 RECROSS EXAMINATION

7 BY MR. XUE:

8 Q. Sir, your memory is not very good, right?

9 MR. SCHWEITZER: Objection.

10 A. What do you mean by that? I don't understand.

11 Q. You answered a lot of questions saying you don't remember,
12 right?

13 A. Yes.

14 Q. Because your memory is not very clear as to time of your
15 employment, right?

16 MR. SCHWEITZER: Objection.

17 Q. Let me rephrase it. During your course of employment there
18 were many people who worked as cashier or answering phone calls
19 for Ichiro Sushi restaurant, right?

20 A. What do you mean by that? I don't understand.

21 Q. Let me put it this way, you work for a restaurant for how
22 many years?

23 A. From 2012 to 2014, June 30.

24 Q. So during this two- to three-year time period, how many
25 people work as the cashier for Ichiro Sushi restaurant?

J4NTLI2

Zhao - Recross

1 A. In the beginning it's the female boss, the small boss, boss
2 Wang.

3 Q. Anyone else?

4 A. Yes.

5 Q. How many others?

6 A. A lot, some I don't know the names.

7 Q. Is it more than ten?

8 A. I don't remember.

9 Q. So what made you believe that the lady who testified
10 yesterday was one of the cashiers?

11 A. I saw her count the money.

12 Q. How many times did you see her count the money?

13 A. I don't remember.

14 Q. Do you understand you are testifying under oath?

15 A. Yes.

16 Q. Do you understand if you lie under oath you could be
17 subject to a penalty of perjury?

18 A. Yes.

19 Q. Is it possible you may have mistaken her as someone else?

20 A. Then I don't remember.

21 Q. You don't remember or you're not sure?

22 A. I don't remember.

23 Q. So you don't remember whether the lady who testified
24 yesterday indeed ever worked as a cashier, is that correct?

25 A. She did, but I don't know how long, that I forgot.

J4NTLI2

Zhao - Recross

1 Q. Is it possible it could be one day?

2 A. I don't know, I forgot, I don't remember.

3 MR. XUE: I have no more questions.

4 THE COURT: Mr. Yan.

5 RECROSS EXAMINATION

6 BY MR. YAN:

7 Q. Mr. Zhao, you remember that you respond to your counsel
8 questions written on your declaration of February 14, 2019
9 complete accurate and you said that yes, and you said also you
10 had nothing more to add, is that correct?

11 A. Yes.

12 Q. However, your declaration made on February 4, 2019 you
13 never claim that it was Mr. Wang here increase five dollars for
14 you when your rates were changed, is that correct?

15 A. That I don't remember, but the truth is that I actually get
16 it. He's the one that increased five dollars for me.

17 Q. Is that your testimony material to this case, Mr. Wang,
18 this person increased five dollars for you?

19 A. Yes.

20 Q. If that information is actually so important, why did you
21 omit that from your declaration on February 4, 2014?

22 A. At that time the translator translated for me, I don't
23 remember anything else.

24 Q. And your testimony today is inconsistent with the
25 declaration made on February 4, 2019, correct?

J4NTLI2

Zhao - Direct

1 MR. SCHWEITZER: I object, it seems like he's making
2 an argument.

3 THE COURT: Overruled.

4 Q. Correct or not correct?

5 Let me rephrase again. You made inconsistent
6 testimony today in comparison to your February 4, 2019
7 declaration but purposely omit the material information that
8 Mr. Wang increased five dollars to you, is that correct?

9 A. I don't know anything else, but when he came he increased
10 five dollars.

11 MR. YAN: Your Honor, motion to strike non-responsive
12 answer and I have no further questions.

13 THE COURT: Overruled.

14 You may step down.

15 Mr. Schweitzer, you may call the next witness.

16 MR. SCHWEITZER: Kai Zhao.

17 MR. YAN: Mr. Wang wanted to use the restroom.

18 THE COURT: Go ahead.

19 KAI ZHAO,

20 called as a witness by the Plaintiff,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SCHWEITZER:

24 MR. SCHWEITZER: May I approach, your Honor?

25 THE COURT: You may. Showing the witness?

J4NTLI2

Zhao - Direct

1 MR. SCHWEITZER: His declaration marked as Plaintiff's
2 Exhibit 20.

3 THE COURT: Okay.

4 BY MR. SCHWEITZER:

5 Q. Mr. Zhao, I'm showing you what has been marked as
6 Plaintiff's Exhibit 20 for identification. Do you recognize
7 this document?

8 A. Yes.

9 Q. And turning to the last page, does your signature appear on
10 this document?

11 A. Correct.

12 Q. When did you affix your signature to this document?

13 A. I forgot.

14 Q. Is there a date on the last page there?

15 A. Let me see. Where?

16 Q. Take your time.

17 A. 2019.

18 Q. Sorry?

19 A. 2019.

20 Q. Do you need your microphone?

21 A. 2019.

22 Q. Thank you. What date in 2019?

23 A. I forgot.

24 Q. Prior to your affixing your signature to this document, was
25 it interpreted for you?

J4NTLI2

Zhao - Direct

1 A. Yes.

2 Q. And since you signed this document, have you had the
3 opportunity to review this document?

4 A. Yes.

5 Q. When was that?

6 A. When asked me to sign it was translated to me, but I don't
7 speak English, so I don't understand it.

8 Q. Was it interpreted for you at that time?

9 A. Yes.

10 Q. And since that time, when you signed it, have you had the
11 opportunity to review this document with an interpreter or
12 without.

13 A. No.

14 MR. SCHWEITZER: At this time I would like to enter
15 Plaintiff's Exhibit 21 as Mr. Zhao's direct testimony.

16 THE COURT: Any objections?

17 MR. YAN: No objection.

18 THE COURT: Thank you. Plaintiff's 20 is admitted as
19 the direct testimony of Mr. Zhao.

20 MR. SCHWEITZER: Sorry, your Honor, I think it should
21 be 21.

22 THE COURT: Thank you, 21.

23 (Plaintiff's Exhibit 21 received in evidence)

24 MR. SCHWEITZER: And this document incorporated,
25 excuse me refers to Plaintiff's Exhibit 2 as well.

J4NTLI2

Zhao - Cross

1 THE COURT: Any objection to Plaintiff's Exhibit 2?

2 MR. YAN: No objection, your Honor.

3 THE COURT: Has that been admitted previously or not?

4 MR. SCHWEITZER: It has not.

5 THE COURT: Plaintiff's Exhibit 2 is admitted.

6 (Plaintiff's Exhibit 2 received in evidence)

7 MR. SCHWEITZER: Nothing further on direct then.

8 THE COURT: Thank you.

9 MR. COOPER: Your Honor?

10 THE COURT: Yes.

11 MR. COOPER: Before we begin cross, I was just handed
12 amended declarations for the bench trial by the defendants. I
13 don't know what has changed about their declarations, but I
14 think it's improper for me to to have to compare them right
15 now.

16 MR. SCHWEITZER: It also seems I was not handed copies
17 of these, at least I don't see any.

18 THE COURT: We're going to keep going, and the
19 declarations that were submitted will be what will be used, and
20 if the witnesses need to make any oral changes, as we have with
21 every other witness, they will be given that opportunity.

22 MR. COOPER: Thank you.

23 CROSS-EXAMINATION

24 BY MR. XUE:

25 Q. Mr. Zhao, what's your home address?

J4NTLI2

Zhao - Cross

1 A. Flushing, 583 Lauren Street.

2 Q. Is there an apartment number?

3 A. No, first floor.

4 Q. What's your highest level of education?

5 A. Six years.

6 Q. Where, in China or U.S.?

7 A. China.

8 Q. When did you work for Ichiro Sushi Second Avenue?

9 A. I worked twice for this restaurant, the first time started
10 in September 2010 to April 2012, the second time from
11 November 2013 to I think December 2014.

12 Q. During your employment, who were the person who set your
13 pay and method of pay?

14 A. The first time it's like everybody say, the female boss,
15 from the period of 2010 to 2012.

16 Q. How about the second time period?

17 A. Second time is Mr. Wang, boss Wang.

18 Q. And now who was the person who supervised you when you were
19 working for the restaurant?

20 A. The first time, the first time frame was the female boss.
21 The second time is boss Wang, but the female boss is also
22 present, she's also responsible.

23 Q. During your employment, who were the person who had
24 authority to hire or fire anyone at the restaurant?

25 A. Those two bosses I just mentioned.

J4NTLI2

Zhao - Cross

1 Q. Who were the person responsible for keeping your employment
2 record?

3 A. The first time is the female boss, the second time is
4 Mr. Wang.

5 Q. And as you sit here today, do you know this female boss
6 name?

7 A. I don't know.

8 Q. Was she here during this trial?

9 A. Do you mean the boss who paid me, that boss?

10 Q. Yes.

11 A. No.

12 Q. Do you know the lady who testified yesterday?

13 A. I believe I saw her.

14 Q. You believe you saw her. So are you sure you saw her
15 before?

16 A. Yesterday when I saw her I say it's very familiar face,
17 been to the store before, been to the restaurant before.

18 Q. Do you recall how many occasions did you see her before?

19 A. How many occasions? I don't remember. But I have been
20 working in this store on and off twice and the face is very
21 familiar. How many times, I don't remember.

22 Q. Is it possible you may have seen her outside of your
23 restaurant?

24 A. No.

25 Q. Is it possible that she may have been a customer of the

J4NTLI2

Zhao - Cross

1 restaurant?

2 A. No, from my impression, I think it's the person from the
3 front when she was checking, when she was doing the checkings.
4 Just regular person cannot enter the front desk.

5 Q. Is it possible you may have mistaken her as someone else?

6 A. I don't think so.

7 Q. Have you ever talked to her?

8 A. No. She does not come often. I don't know who she is.

9 Q. As you sit here today, do you know her name?

10 A. No.

11 Q. Do you know whether she's married?

12 A. I don't know.

13 Q. Do you know whether she has any children?

14 A. I don't know.

15 Q. Did anyone explain to you you filed a lawsuit against her,
16 the lady who testified yesterday?

17 A. What's that mean?

18 Q. Did anyone ever tell you that you filed a lawsuit against
19 the lady who appeared yesterday?

20 A. No.

21 Q. To your knowledge, who are the defendants in this case?

22 A. The boss.

23 Q. Who are the boss you are suing?

24 A. Isn't that in the information? We only work in this
25 restaurant, we don't know who is the boss, we don't ask who is

J4NTLI2

Zhao - Cross

1 the boss in this restaurant. Whoever pays me, that's the boss.

2 As far as who is the manager, that has nothing to do with me.

3 Q. So to your knowledge, you filed a lawsuit against your
4 boss, and you testified you have two boss, one lady boss, one
5 Mr. Wang. Did anyone ever tell you besides Mr. Wang and the
6 lady boss you sued someone else?

7 THE COURT: Asked and answered.

8 Q. Mr. Wang, I direct your attention to your declaration,
9 paragraph six of your declaration, dated February 4, 2019,
10 February 8, 2019. Did anyone translate sentence by sentence to
11 you before you signed this declaration?

12 A. Not sentence to sentence, but the meaning, the general
13 meaning.

14 Q. The general meaning. How do you know the general meaning
15 translated to you?

16 A. For example, like this whole document, the main idea, the
17 main idea.

18 Q. Do you read any English at all?

19 A. No.

20 Q. So this is a five-page affidavit, how long did that
21 translation take?

22 A. I don't remember how long, but four of us were there so it
23 was translated generally, generally.

24 Q. So you're saying the document was translated to you when
25 four of you were present, right?

J4NTLI2

Zhao - Cross

1 A. No, we went there all at the same time, but mine was read
2 to me individually and then the next person.

3 Q. And would your translation take about five minutes?

4 A. No five minutes, not five minutes.

5 Q. Is it less than 15 minutes?

6 A. No, less than 15 minutes.

7 Q. And at the end did you ask any questions when the document
8 was translated to you?

9 A. Sometimes I did ask, but now I forgot.

10 Q. In response to your questions, were the document modified
11 or changed?

12 A. That I don't know.

13 Q. Did they present a document to you and translate to you and
14 you signed -- let me repeat my question.

15 Did they present a document to you, translate the same
16 document to you and have you sign the same document?

17 A. Yes.

18 Q. And I direct your attention to paragraph 6 of this
19 affidavit. The last sentence you said Jian Ping Chen, whom you
20 called lady boss. Do you see that sentence?

21 A. What's that mean?

22 Q. Have you heard about this before ever?

23 A. I was told that the boss last name was Chen.

24 Q. Did you tell the interpreter you don't know the boss' name?

25 A. I don't know.

J4NTLI2

Zhao - Cross

1 Q. My question is did you tell him --

2 A. But I don't know the boss' name.

3 Q. Did you tell the interpreter you don't know the boss' name?

4 A. I think I told the interpreter that the boss last name is
5 Chen, but as far as the name, I don't know.

6 Q. Did you tell the interpreter what's the name of the lady
7 boss?

8 A. No, I only know the last name, I don't know the name.

9 Q. I direct your attention to paragraph 9 of this affidavit.

10 It is stated Jian Ping Chen is the wife of Hui Chen. Did
11 anyone ever translate this sentence to you?

12 A. No, I don't know.

13 Q. Is this the first time you heard about this today?

14 A. What's that mean?

15 Q. Is this the first time someone told you your statement
16 contained a statement that Jian Ping Chen is the wife of Hui
17 Chen?

18 A. No, I don't know about wife.

19 Q. So you did not provide anyone with this information, is
20 that correct?

21 A. I don't know about the wife, I am not -- I don't care about
22 the personal life of the boss.

23 MR. XUE: Your Honor, I would like to show the witness
24 Defendant's Exhibit D.

25 THE COURT: Okay.

J4NTLI2

Zhao - Cross

1 MR. XUE: It's Defendant's -- it's plaintiff
2 Mr. Hildago's response to defendant's interrogatory dated by
3 counsel August 8, 2016.

4 THE COURT: It's D like dog?

5 MR. XUE: Yes.

6 THE COURT: Okay.

7 MR. XUE: Your Honor, I know we submit an exhibit to
8 you, I do want to apologize to the Court because the parties'
9 signature page was not sent with the response, it was sent
10 later on. So we missed the signature page. I do have copy for
11 the Court, and I also show it to counsel. He does not object.
12 We could supplement it.

13 THE COURT: Okay.

14 BY MR. XUE:

15 Q. So Mr. Zhao, I would like you to turn to the last page on
16 this document. Is this your signature?

17 A. Correct.

18 Q. Do you remember whether you sit down with anyone to go over
19 certain questions posted by my law firm?

20 A. I did sit down and talk.

21 Q. Do you recall you signed a response to my firm's
22 interrogatory in connection with this case?

23 A. Yes.

24 MR. XUE: Your Honor, I move for admission of this
25 document.

J4NTLI2

Zhao - Cross

1 THE COURT: So you're moving the admission of
2 Defendant Ichiro Asian Fusion D including the signature page
3 that you've just handed up.

4 MR. XUE: Yes, your Honor.

5 THE COURT: Mr. Schweitzer?

6 MR. SCHWEITZER: No objection.

7 THE COURT: It is admitted.

8 (Defendant's Exhibit Ichiro Asian Fusion D received in
9 evidence)

10 BY MR. XUE:

11 Q. I direct your attention to page 8, question 22. It says
12 interrogatory number 22, I read for the record, set forth in
13 detail the facts and circumstances to substantiate plaintiff's
14 allegation contained in paragraph 30 of the first amended
15 complaint that, "Jian Ping Chen is an owner, operator, and/or
16 officer of Ichiro restaurant Inc., Ichiro Sushi Inc., Ichiro
17 Sushi Inc. and Ichiro Asian Fusion Inc."

18 Do you recall being asked this question?

19 A. But not as detailed as this, just say she's the boss.

20 Q. And do you recall you gave a response, you said, "I have no
21 response to this question?"

22 A. What's that mean?

23 Q. Did anyone ever translate this question and answer to you?

24 A. Somebody translated the boss last name is Chen, but I don't
25 know the name, I only later know that this boss is Mr. Wang.

J4NTLI2

Zhao - Cross

1 Q. So this document contained almost nine pages of document,
2 not including your signature page. How long did that
3 translation take?

4 A. I already told you earlier, it was not translated sentence
5 by sentence. If it is translated sentence by sentence it takes
6 a very long time. I have to work every day.

7 Q. So this document was translated to you in less than ten
8 minutes?

9 A. It's not less than ten minutes.

10 Q. How long did it take, do you remember?

11 A. I would not look at the clock and say how many minutes, but
12 I'm sure it's not less than ten minutes.

13 Q. Approximately how long?

14 A. 20 minutes or maybe a little more, but I don't remember.

15 Q. This document, the first nine page contain page number,
16 your signature page does not contain a page number. Did you
17 sign this document in front of an interpreter?

18 A. Yes, correct.

19 Q. I also would like to direct your attention to interrogatory
20 number 23 on the same page, page 8. Set forth in detail the
21 facts and circumstances to substantiate plaintiff's allegation
22 contained in paragraph 31 of the first amended complaint.

23 MR. SCHWEITZER: This I'll object to. Interrogatories
24 are limited to identifying persons of knowledge in this
25 district.

J4NTLI2

Zhao - Cross

1 THE COURT: Let me make a suggestion, this is in
2 evidence, you're going to keep getting the same answers from
3 the witness, as well as --

4 MR. XUE: Your Honor --

5 THE COURT: Let me finish.

6 -- you can make any arguments you want with respect to
7 the response. It was unobjected to, it's in evidence, so I'm
8 not sure how this advances your cause to spend time asking
9 questions on these individual interrogatories.

10 MR. XUE: I do want to ask one last question about
11 this document. I do want to point out -- I want to ask him his
12 understanding of Jian Ping Chen's gender, because apparently
13 referred to Jian Ping Chen as mister and say --

14 THE COURT: I will let you do one more on this line.
15 I note that you are -- I think you have about two minutes left
16 in the reserved time for this witness. Again, you can borrow
17 off other witnesses.

18 What is your objection, Mr. Schweitzer?

19 MR. SCHWEITZER: Well, the objection was to the
20 interrogatory itself, but no objection to the question.

21 THE COURT: Go ahead.

22 BY MR. XUE:

23 Q. Do you recall you respond to the question thinking that
24 Jian Ping Chen is a male?

25 A. I don't know male or female, I just know that we have a

J4NTLI2

Zhao - Cross

1 boss named Chen.

2 MR. XUE: I have no more questions for this witness,
3 your Honor.

4 THE COURT: Okay.

5 Mr. Yan.

6 CROSS-EXAMINATION

7 BY MR. YAN:

8 Q. Good afternoon. Do you have a change to the declaration
9 made on February 8, 2019?

10 A. No.

11 Q. Do you want to take another opportunity to correct your
12 declaration made on February 8, 2019?

13 A. What do you mean by that?

14 Q. Do you want to take one more opportunity to correct your
15 written declaration?

16 THE COURT: Why don't you get to the question,
17 Mr. Yan.

18 MR. YAN: If he does not want --

19 THE COURT: He swore to it. He's been asked that
20 multiple times. He also doesn't read English. If you want a
21 specific passage translated and ask him if it continues to be
22 his sworn testimony, you can do that, but you're wasting time
23 you cannot get back.

24 BY MR. YAN:

25 Q. Mr. Zhao, let me direct your attention to paragraph five.

J4NTLI2

Zhao - Cross

1 You claim that you worked in the Ichiro Sushi restaurant until
2 April 18, 2016, is that correct?

3 A. No, '14.

4 Q. Why did you do that, you claim you had employment issues
5 with Ichiro Sushi?

6 Why did you claim that you worked in the Ichiro Sushi
7 restaurant located at 1694 Second Avenue, New York, New York
8 until April 16, 2000 -- April 18, 2016?

9 A. That I don't know. That I don't know because we worked
10 through a translator and then a recording person. Maybe I
11 didn't say it clearly, maybe the interpreter didn't interpret
12 clearly, maybe it was not recorded clearly, I don't know.

13 Q. Who was -- who made a mistake?

14 A. How should I know that?

15 Q. Is it accurate to say that this February 8, 2019
16 declaration not accurate?

17 A. What's that mean?

18 Q. This declaration was not true and accurate.

19 A. Are you only saying only that date was not correct?

20 Q. The content of this declaration is not correct.

21 A. I work every day. The testimony is correct except this
22 date is not correct.

23 Q. Because this date is material to your claim for damages the
24 Court will award you.

25 MR. SCHWEITZER: Is that a question?

J4NTLI2

Zhao - Cross

1 THE COURT: Mr. Yan, he's answered the question. If
2 you want to make an argument to me at closings in the written
3 submissions, you can do that.

4 MR. YAN: I'll move on, your Honor.

5 THE COURT: Thank you.

6 BY MR. YAN:

7 Q. Mr. Zhao, any other mistakes, if you knew, you made in this
8 declaration you would like to correct again?

9 A. This is all in English, I don't understand.

10 Q. If you did not understand this declaration, why did you
11 sign your name on February 8, 2019 and declare under penalty of
12 perjury the foregoing is true and correct?

13 A. What do you mean perjury? What's perjury mean? I don't
14 understand.

15 Q. I read from your declaration, you declare under penalty of
16 perjury it was you declaring under penalty of perjury saying
17 that all the statements made in your declaration on February 8,
18 2019 was true and correct. Did you do that on February 8,
19 2019?

20 A. Yes, yes.

21 Q. Did you do that and reviewed your declaration with your
22 attorney, Mr. Aaron Schweitzer, on February 8, 2019?

23 A. Yes.

24 Q. And you said Mr. Wang was your boss, is that correct?

25 A. Yes.

J4NTLI2

Zhao - Cross

1 Q. Since when?

2 THE COURT: I didn't get the answer.

3 THE WITNESS: Yes, correct.

4 Q. Since when Mr. Wang became your boss?

5 A. 2013.

6 Q. Let me direct your attention to the paragraph ten of your
7 declaration, let me read it to you. Soon after my employment
8 Juhang Wang worked at the sushi bar at Ichiro Sushi, beginning
9 in 2011 he will be in charge of restaurant whenever Hui Chen,
10 Jian Ping Chen were both not there.

11 Was that your declaration made on February 8, 2019?

12 A. Which year to which year?

13 Q. Beginning in 2011 Juhang Wang would be in charge of the
14 restaurant. Did you make that declaration on February 8, 2019?

15 A. I know the boss is Wang, I don't know anything else.

16 Q. So boss Wang start to become your boss in 2011, is that
17 correct?

18 A. No.

19 Q. Why did you do that and make that declaration saying that
20 boss Wang became your boss beginning in 2011 in paragraph 10 of
21 the declaration made on February 4, 2018?

22 A. That I don't know. I didn't say that. Maybe there's a
23 mistake when they were typing.

24 Q. If that's the second mistake, can you tell us if you made
25 any other mistakes in your declaration made on February 4,

J4NTLI2

Zhao - Cross

2018?

A. I don't know because I don't know English.

Q. If you do not know English, and seems like you did not know who is Juhang Wang, how did you get this name Juhang Wang in your declaration February 8, 2019?

A. What's that mean?

Q. How did you get this name, Juhang Wang, when you made your declaration on February 8, 2019?

A. I forgot.

Q. And you did not know who was Juhang -- strike that.

You did not know who Juhang Wang was, however you sued him in past four years, is that correct?

A. Because our right was violated. We only worked there. And as workers, whoever is the boss, we don't care.

Q. And when you review this declaration with Mr. Aaron Schweitzer, your attorney, on February 8, 2019, you declared this document has been translated to you in your native language Chinese and you fully comprehend the paragraphs in paragraph 25 of the declaration. Is that accurate?

A. I only know the main idea, the main part, but as far as the details, because I didn't really see it, so I don't -- I'm not really clear.

Q. When you sue somebody, were you supposed to allege details against someone sitting in this courtroom?

THE COURT: Sustained.

J4NTLI2

Zhao - Cross

1 Q. Mr. Zhao, you claim that Hui Chen worked as a manager in
2 Ichiro Sushi. Tell us what did he manage your work.

3 A. Who are you talking about?

4 Q. Hui Chen, H-U-I C-H-E-N.

5 A. I don't know the names of the people.

6 Q. If you did not know this name, why did you put this name in
7 your declaration?

8 A. This is through the law office. We only provide the
9 information that we have and then give it to them.

10 Q. You did not provide information to your attorney, correct,
11 in the declaration?

12 MR. SCHWEITZER: Objection.

13 THE COURT: Sustained.

14 Q. In the summer of 2013, did you work in the restaurant?

15 A. Yes. Wait, the summer of 2013? No.

16 Q. When you were sitting in the courtroom today your co-worker
17 claimed that you worked with them in the summer 2013. Why did
18 they do that?

19 THE COURT: Sustained.

20 Q. When did you notice the change of ownership of Ichiro Sushi
21 restaurant?

22 A. The second time when I came back to the restaurant.

23 Q. When did you come back to the restaurant the second time?

24 A. Like I told you before, it's in November 2013.

25 Q. And before you came back to the restaurant in

J4NTLI2

Zhao - Cross

1 November 2013, did you notice any change of ownership of Ichiro
2 Sushi restaurant?

3 MR. SCHWEITZER: Objection.

4 THE COURT: Overruled.

5 A. I don't know. If I'm not there, how would I know?

6 Q. When did you leave Ichiro Sushi restaurant before you came
7 back in November 2013?

8 A. Like I told you before, it's in April of 2012.

9 Q. In April 2012 did you notice any change of ownership of
10 restaurant?

11 MR. SCHWEITZER: Asked and answered.

12 THE COURT: Overruled.

13 A. When?

14 Q. April 2012.

15 A. I didn't know. That's the boss' business, not my business.

16 Q. When you work in the Ichiro Sushi restaurant, at any point
17 in time did you notice any change of ownership?

18 A. I don't know. I only heard. The first time when I worked
19 there, it was the female boss who give me my salary and all
20 that. The second time when I went back there -- not the second
21 time, when I went back there the second time, this is the
22 person who give me my salary. So I just asked what happened.
23 Maybe not change of ownership necessarily, but definitely there
24 is a share in the restaurant. And also, I was told that
25 there's also another big boss there.

J4NTLI2

Zhao - Cross

1 Q. You believe that whoever gave you the money, that person is
2 the owner of the restaurant?

3 A. Correct.

4 Q. Did you ever do accounting with cashier for your tips?

5 A. Are you saying every day when we were --

6 THE INTERPRETER: Sorry, Judge, it's on the tip of my
7 tongue, this particular word.

8 THE COURT: Go ahead.

9 A. When we counting up our money.

10 Q. My question was every day you check -- order the receipts
11 with the cashier for accounting for the tips, did you ever do
12 that -- did she ever do that?

13 A. Yes.

14 Q. And then did cashier pay you tips after she did accounting
15 with you?

16 A. Correct.

17 Q. Based on your reasoning, the cashier paid you money so the
18 cashier was owner of the restaurant?

19 A. No, that's not how it is, that's not salary, that's not the
20 salary money, that's only the tips.

21 Q. How did Mr. Wang manage your work in the restaurant?

22 A. He arranged for our schedule, including the delivery every
23 day and side work.

24 Q. When you came back in November 2013, who hired you?

25 A. Mr. Wang.

J4NTLI2

Zhao - Cross

1 Q. On what day you met Mr. Wang for your rehirement?

2 A. I forgot, it's been a long time.

3 Q. At that time what did Mr. Wang wear when you met him for
4 rehirement?

5 MR. SCHWEITZER: Relevance.

6 THE COURT: Overruled.

7 A. Maybe it's in working clothes. I forgot, but definitely
8 not in suits.

9 Q. What kind of clothes he wore when he met you for
10 rehirement?

11 A. I don't have this memory.

12 Q. So you could not recall that actually Mr. Wang actually met
13 you for your rehirement when you came back to work for the
14 restaurant in the second time, correct?

15 MR. SCHWEITZER: Objection.

16 THE COURT: Sustained.

17 How much longer with this witness, Mr. Yan?

18 MR. YAN: Another five minutes.

19 THE COURT: Okay.

20 BY MR. YAN:

21 Q. Did you ever work for New Ichiro Sushi, Mr. Zhao?

22 A. What does that mean, New?

23 Q. Did you ever work for a restaurant called New Ichiro Sushi?

24 A. New Ichiro Sushi?

25 Q. That was my question.

J4NTLI2

Zhao - Cross

1 A. I don't know what restaurant is that. I only work in the
2 Second Avenue, I don't know.

3 Q. Did you start to punch in and punch out at any time during
4 your work in the Second Avenue restaurant located at Second
5 Avenue, 1694 Second Avenue?

6 A. I did. I believe it's in October of 2014.

7 Q. And when you start to punch in and punch out, did you
8 receive payments for the hours you worked in the restaurant?

9 A. What's that mean?

10 Q. After you started punching in and punching out in the
11 restaurant, did you receive any payments?

12 A. The same day?

13 Q. What about payment period a week, a month?

14 A. Once a month.

15 Q. And when you received payments, were you present a
16 statement about your hours worked, rate of payment and the
17 compensation you received?

18 A. I don't understand. Are you saying that when I received my
19 salary, that the same day that I received that?

20 Q. When you received the wages payment, did you -- were you
21 presented a statement about the hours you worked, your rate of
22 payment, and the compensation you received?

23 A. I remember when I started working there nothing like this,
24 but when I almost -- I think about maybe October I remember
25 signing something.

J4NTLI2

Zhao - Cross

1 MR. YAN: Your Honor, may I present Plaintiff Exhibit
2 Number 2, and we also ask the defendant exhibit to Mr. Zhao to
3 see whether or not he signed all these.

4 THE COURT: We're going to break. Ten minutes.

5 (Recess taken)

6 THE COURT: You may come back to the stand, Mr. Zhao.
7 Mr. Yan.

8 MR. YAN: Yes, your Honor, may I approach to Mr. Zhao
9 with the Plaintiff Number 2.

10 THE COURT: Plaintiff's 2.

11 MR. YAN: That's page 14 through 23.

12 THE COURT: Plaintiff's 2?

13 MR. YAN: Yes.

14 Q. Mr. Zhao, did you sign all these statements?

15 A. Let me see.

16 Q. Sorry?

17 A. Let me see.

18 THE COURT: You're specifically asking about pages 14
19 through 23 of what's been marked Plaintiff's 2?

20 MR. YAN: Yes.

21 THE COURT: Okay.

22 A. I believe some I signed, some I didn't sign.

23 Q. Which ones did you not sign?

24 THE COURT: Why don't you go through page by page.

25 Q. The first page, did you sign that one?

J4NTLI2

Zhao - Cross

1 THE COURT: You mean what's page 14?

2 MR. YAN: Yeah.

3 A. This is not my name.

4 Q. Did you receive a payment on that day?

5 A. I don't remember. This is not my name. I have an H,
6 there's no H here.

7 THE COURT: We can put these aside. Right?

8 MR. YAN: Yeah.

9 Q. Did you receive payments -- strike.

10 When you received payments, did you have to sign
11 statement?

12 A. Yes. Before no, only starting October and after.

13 Q. Let me present to you page D00006 being the plaintiff
14 number 2. Did you sign this statement?

15 A. Yes, this is mine, I write this.

16 Q. Let me show you page also in the Plaintiff Number 2 is this
17 page.

18 THE COURT: What are you showing?

19 MR. YAN: It's a notice and acknowledgment of pay rate
20 and payday form. It's also in the Plaintiff Number 2.

21 THE COURT: So it's marked for identification as
22 Plaintiff's 2, what Bates number?

23 MR. YAN: It was ordered into evidence and as the
24 Plaintiff Number 2.

25 MR. SCHWEITZER: It's Bates T0007, the Bates number is

J4NTLI2

Zhao - Cross

1 off to left and sideways because when it was given to us it was
2 sideways, so we turned in the PDF viewer to make it easier to
3 read.

4 THE COURT: Plaintiff's 2 has not been admitted en
5 mass, correct.

6 MR. SCHWEITZER: Yes, it was.

7 MR. YAN: Yes.

8 THE COURT: It was admitted today?

9 MR. SCHWEITZER: Yes.

10 THE COURT: Okay. So you're showing the witness
11 Plaintiff's 2, and I think it's, what, the second page in to
12 that exhibit Bates marked on the left as D7.

13 MR. YAN: Yes.

14 THE COURT: Okay.

15 Q. Mr. Zhao, you know this form, correct?

16 A. I didn't see this before.

17 THE COURT: Mr. Yan, anything further?

18 Q. Let me show the pages from D96 to D101 and also original
19 timecards, Bates page D9 to D12. If you compare the original
20 timecards with the copy, are the copies true and accurate
21 copies of original timecards?

22 A. It's been a long time, I forgot, but I remember I punched
23 the cards.

24 MR. YAN: Your Honor, I have no further questions.

25 THE COURT: Okay.

J4NTLI2

Zhao - Cross

1 MR. COOPER: Couple of questions, Judge.

2 THE COURT: Yes.

3 CROSS-EXAMINATION

4 BY MR. COOPER:

5 Q. Just a couple of questions. Did you work for the
6 restaurant in September of 2014?

7 A. 20 what?

8 Q. '14.

9 A. Are you talking about Ichiro?

10 Q. Ichiro Sushi.

11 A. Yes.

12 Q. Did the restaurant close in September or October 2014?

13 A. No, it didn't close.

14 Q. Were you always paid in cash?

15 A. Are you talking about the salary at the end of the month?

16 Q. At the end of the month when you received your salary, was
17 it cash or some other form of payment?

18 A. Correct.

19 Q. Correct it was cash?

20 A. Correct, cash.

21 Q. Did you ever have to sign a book or anything like that when
22 you received your pay?

23 A. I think so. I think so, but I'm not sure.

24 MR. COOPER: Thank you.

25 THE COURT: Mr. Schweitzer.

J4NTLI2

Zhao - Redirect

1 REDIRECT EXAMINATION

2 BY MR. SCHWEITZER:

3 Q. When you say you signed a book before, before when?

4 A. I think it's before the card.

5 Q. And after the cards came in you no longer signed the book?

6 A. I think so, but -- it's not in the book, but I still have
7 to sign something, but I don't remember.

8 Q. What was it you signed after the cards came in that wasn't
9 in the book?

10 THE INTERPRETER: Sorry?

11 Q. What besides the book did you sign after the cards came in,
12 after the cards started being used?

13 A. I don't remember.

14 Q. What was written in the book when you signed it?

15 A. I think it's cash, and then the name and then sign in,
16 something like that.

17 Q. When you say cash, you mean the word cash or some amount of
18 cash?

19 A. What's that mean?

20 Q. You tell me. What exactly did it say?

21 A. It's like how much I get paid, like the number, how much I
22 get paid amount per salary and then the name.

23 Q. And what was the number?

24 A. What's that mean?

25 Q. What number was it, what number appeared in the book that

J4NTLI2

Zhao - Redirect

1 you signed next to?

2 A. My every month salary.

3 Q. And what was that?

4 A. 800.

5 Q. Okay. After you signed the book, what happened to it?

6 A. The boss took it away.

7 Q. When you say the boss, to whom were you referring?

8 A. Wang boss. This is before, this is before.

9 Q. When was the first time that Wang had you to sign a book to
10 receive your pay?

11 A. The first time was the first month after I work.

12 Q. Which was what, September 2010?

13 A. No, not 2010. At that time boss Wang is not there yet,
14 it's the female boss then.

15 Q. So can you tell me what month boss Wang first had you sign
16 the book?

17 A. Are you saying 2013 or 2010?

18 Q. You tell me, what was the first month that boss Wang had
19 you to sign the book, month and year?

20 A. The end of the month.

21 Q. The end of which month in which year?

22 A. For example, I came in September, then I get paid the end
23 of October.

24 Q. Okay. So when was the first time that you signed this
25 book? What month and what year?

J4NTLI2

Zhao - Redirect

1 A. I forgot. This is a long time ago.

2 Q. Who is the first person who had you sign the book?

3 A. Are you saying 2013?

4 Q. The very first time, whenever it was, who was the first
5 person who had you sign the book?

6 A. In 2010 we also have to sign, but I don't know which you're
7 referring to.

8 Q. The very first time ever in your life.

9 A. Talking about in China?

10 Q. The very first time anyone in Ichiro restaurant had you
11 sign this book to have you receive your pay, who was it who had
12 you sign this book?

13 A. The female boss.

14 Q. Okay. During the time the female boss was in charge of the
15 restaurant, was there also a male boss?

16 A. Yes.

17 Q. Has that person been in the courtroom yesterday or today?

18 A. No.

19 Q. Do you know that person's name?

20 A. I don't know, but the last name is Chen.

21 Q. And what was Mr. Chen's role in the restaurant?

22 A. He rarely comes.

23 Q. How often did he come?

24 A. Around October time -- around 2010, sometimes he comes once
25 a month, maybe once every month and a half, maybe once every 20

J4NTLI2

Zhao - Redirect

1 days, there's not a set day.

2 Q. What did he do when he came?

3 A. For example, when he comes he usually check the front, the
4 kitchen and the basement, the workplace, and see if everything
5 is set in its right place, if things are not set or organized
6 he will arrange the workers to set them up.

7 Q. Did ever give you tasks to do?

8 A. Of course, if there's an order comes he told us to hurry up
9 and do delivery, because he's the boss.

10 Q. Did Mr. Chen continue coming to the restaurant after
11 Mr. Wang came to -- started coming to the restaurant?

12 A. He came, but rarely, a lot less than before.

13 Q. And what would he do when he came?

14 A. Same as before, and then sometimes he talks to Mr. Wang and
15 you know it's like the boss have their boss business.

16 Q. When was the last time you observed Mr. Chen come to the
17 restaurant?

18 A. This I don't remember.

19 Q. Did Mr. Chen come to the restaurant at any time during
20 second period of employment from 2013 to 2014?

21 A. Yes.

22 Q. And what did he do during that time?

23 A. What's that mean? Do you mean when he comes to the
24 restaurant?

25 Q. Yes.

J4NTLI2

Zhao - Redirect

1 A. Like I said before, he comes, maybe talk about work with
2 Mr. Wang, and then look at the restaurant.

3 Q. And during that time, did he give you any tasks to do?

4 A. Because at that time Mr. Wang is the one who is responsible
5 to assign us.

6 Q. What was -- when you initially started your employment,
7 what was the lady boss's role in the restaurant?

8 A. Who, the female boss?

9 Q. Yes.

10 A. She does everything in the front. For example, when the
11 phone comes in, she picks up the phone calls, and when they ask
12 for checks, she give out checks, and then when it's really busy
13 she also help take out orders as well.

14 Q. Did she ever give you any tasks to do?

15 A. Yes.

16 Q. Such as?

17 A. Like the sauce, like putting on the merchandise and also
18 like sodas.

19 Q. When was the last time -- withdrawn.

20 How often did the lady boss come to restaurant?

21 A. Besides the days off, she's always there, almost every day.

22 Q. When was the last time she was present in the restaurant
23 that you saw her present at the restaurant?

24 A. Before I left Ichiro.

25 Q. How long before you left Ichiro?

J4NTLI2

Zhao - Redirect

1 A. What's that mean?

2 Q. How long before you left Ichiro was it -- withdrawn.

3 How long did the time pass between the time that you
4 last saw the lady boss at Ichiro and the time you left Ichiro?

5 A. I don't really understand what you mean by this. For
6 example, if today is the last day I worked in Ichiro, that's
7 the last day I saw the female boss.

8 Q. Okay, that makes sense.

9 Do you recall the person who testified first on
10 Monday?

11 A. Are you talking about the lady from yesterday?

12 Q. Yes.

13 A. Like I told you before, I believe I saw her before.

14 Q. When and where did you see her before?

15 A. I believe in Ichiro, but hold on. But I was in Ichiro
16 twice, and so it's been such a long time, I don't remember, but
17 I think it's in Ichiro.

18 Q. And when you saw her in Ichiro, did she speak to you?

19 A. No.

20 Q. When you saw her in Ichiro, what was she doing?

21 A. Well, in my impression, whoever works in the front is
22 either a boss or owner, so my impression is from there. And
23 small impression.

24 Q. But what exactly did you observe her doing when you
25 observed her in Ichiro Sushi?

J4NTLI2

Zhao - Redirect

1 A. Like I say, in the front desk is usually picking up the
2 phone calls, but I didn't pay attention, usually I don't pay
3 attention to the front desk.

4 Q. Did you pick up your tips from the person at the front
5 desk?

6 MR. XUE: Objection, leading.

7 THE COURT: Sustained.

8 Q. How did you receive your tips at Ichiro Sushi?

9 A. Are you talking about the daily tips?

10 Q. Yes.

11 A. In the end of the day goes to the front desk because
12 everything is computerized, so then go to the front desk and
13 then they will calculate the amount for us.

14 Q. Did the person you receive tips from at the front desk
15 change over time?

16 A. Depends. When Mr. Wang was there, Mr. Wang had give me
17 tips; when the female boss is there, the female boss would give
18 me the tips. And in the end, also there's dining area manager
19 when the dining area manager was there, the dining area manager
20 would give my the tips. Anyway, whoever can go to the front
21 desk is the person who is responsible.

22 Q. Have you observed any of the people who gave you tips in
23 the courtroom either yesterday or today?

24 A. No.

25 Q. Do you recognize the person seated, from your perspective,

J4NTLI2

Zhao - Redirect

1 to the right most side of the defense table?

2 A. Are you talking about boss Wang?

3 Q. You tell me.

4 A. The person behind you is boss Wang.

5 Q. What was his role in the restaurant?

6 A. One of his responsibility is managing us, but he does
7 everything, too.

8 Q. What did he do to manage you?

9 A. What do you mean by managing us?

10 Q. You tell me, what did he do to manage you?

11 A. Like managing us into the delivery and miscellaneous work
12 or side work.

13 Q. And when was the first time that you saw him present at
14 Ichiro Sushi?

15 A. Forgot.

16 Q. When he first appeared at Ichiro Sushi, what was his role?

17 MR. YAN: Objection, question answered.

18 THE COURT: Sustained.

19 Q. Did Mr. Wang's role in the restaurant change over time?

20 A. What's that mean? I don't know.

21 Q. Did the actions that Mr. Wang took with respect to you
22 change over time?

23 MR. YAN: Objection, leading.

24 THE COURT: Sustained.

25 Q. When Mr. Wang first came to the restaurant -- sorry,

J4NTLI2

Zhao - Redirect

1 withdrawn.

2 After Mr. Wang first came to the restaurant, who was
3 it who would give you tasks to do from day to day?

4 MR. YAN: Objection, asked and answered.

5 THE COURT: Sustained.

6 MR. SCHWEITZER: May I approach?

7 THE COURT: Showing?

8 MR. SCHWEITZER: Excerpts from Plaintiff's Exhibit 2.

9 THE COURT: What pages?

10 MR. SCHWEITZER: To start, page 6.

11 THE COURT: Okay.

12 Q. I'm showing you what's been marked Bates number D6 from
13 Plaintiff's Exhibit 2. Do you recognize that document?

14 A. I signed here, yes.

15 Q. Is the rest of the handwriting on that document your
16 handwriting besides the signature?

17 A. This I signed this, I signed this, but this I don't
18 remember.

19 Q. What are you indicating with that last "this?"

20 A. This is not mine, but this doesn't look like my penmanship.

21 Q. Since we don't have the ELMO you're going to have say --
22 when you say "this," you are going to have to refer to a
23 specific portion of the document in order to identify it.

24 THE INTERPRETER: Witness is pointing at the bottom
25 line when he said this is not my penmanship.

J4NTLI2

Zhao - Redirect

1 Q. I'm now showing you page 7. There's handwriting on this
2 document, is that your handwriting?

3 A. No.

4 THE COURT: Mr. Schweitzer, my deputy tells me that
5 the ELMO is working. You're welcome to use it.

6 MR. SCHWEITZER: Thank you, Judge.

7 Q. I placed a document on the screen. Can you see it on the
8 screen in front of you?

9 I'm showing you page 8 of Plaintiff's Exhibit 2. Do
10 you recognize this document?

11 A. This is the punch card.

12 Q. And who did the punching on this punch card?

13 A. Is there a name here?

14 This is my name, but I didn't put the name there.

15 Q. I'm now showing you page 9 of the same document, do you
16 recognize that?

17 A. This is mine.

18 Q. And did you put your name here?

19 A. It doesn't look like mine but the first paper that I show
20 definitely.

21 Q. I'm showing you page 14 of Plaintiff's Exhibit 2. Have you
22 seen this document before?

23 A. I don't think so.

24 Q. There's a number on here for total base pay in the amount
25 of \$195, is that what you were paid for the period of the first

J4NTLI2

Zhao - Redirect

1 week of October 2014?

2 A. We do not get paid base pay every week we only get paid at
3 the end of the month.

4 Q. I'm now showing you page 145. Do you recognize this
5 document?

6 A. I forgot. I think I have some impression.

7 Q. There is handwriting on this document. Is any of it yours?

8 A. I think it's my signature.

9 Q. Can you point out which handwriting is yours by -- you can
10 touch the screen.

11 A. This one.

12 THE COURT: I don't think it can respond to his touch.
13 You can point on the ELMO and direct him.

14 MR. SCHWEITZER: All right. Sorry, I was thinking
15 back to another instance of this.

16 Q. Is this your signature?

17 A. No.

18 Q. Is this your signature?

19 A. What's that?

20 Q. If it's your signature yes; if not, no.

21 A. No, I can't read this.

22 Q. Is this your signature?

23 A. Yes, this.

24 Q. Is this your signature?

25 A. No.

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Zhao - Redirect

1 Q. Is this your signature?

2 A. Yes, this is.

3 Q. Okay. What do these documents represent, to your
4 recollection?

5 A. I believe it's the tips.

6 Q. Did you -- did customers ever give you tips by cash?

7 A. Yes, if the customer give cash then they give cash.

8 Q. Do any customers give tips by credit card or other
9 electronic means?

10 A. Mostly it is computer-generated orders and credit card.

11 Q. Do you report to the boss when you receive cash tips?

12 A. No, no need.

13 Q. What portion of the tips that you received is represented
14 in these receipts?

15 A. This is the whole day, the whole tips, I think.

16 Q. I'm showing page number 147. Have you ever seen this
17 before?

18 A. I didn't see it.

19 MR. SCHWEITZER: Nothing further.

20 THE COURT: Thank you. Anything further?

21 MR. YAN: Mr. Cooper?

22 MR. COOPER: No, Judge, thank you.

23 MR. YAN: 30 minutes.

24 THE COURT: All right.

25 RECROSS EXAMINATION

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Zhao - Recross

1 BY MR. YAN:

2 Q. Did you receive all the tips you earned when you worked for
3 Ichiro Sushi restaurant?

4 A. What do you mean all the tips?

5 Q. Did you have to share your tips with your co-workers?

6 A. Yes.

7 Q. Did you share your tips with the owner of the restaurant?

8 A. No.

9 Q. All the tips the customer give to you, all you earned, did
10 you receive all your tips even that you share with your
11 co-workers in the pool?

12 MR. SCHWEITZER: Objection.

13 THE COURT: Sustained. I don't understand the
14 question.

15 Q. Tips you earned during delivery, did you receive all these
16 tips, even your share these tips with your fellow delivery
17 people?

18 MR. SCHWEITZER: Objection.

19 THE COURT: Sustained. The question is internally
20 inconsistent. Did you share, did you receive all of what you
21 shared just doesn't -- you have to rephrase it, it doesn't make
22 sense. I just don't know what you're asking.

23 Q. With whom you shared your tips?

24 A. The delivery co-workers.

25 Q. Other than you sharing your types with your co-workers, did

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Zhao - Recross

1 you share your tips with anyone else in the restaurant?

2 A. No.

3 Q. You testified that you would do accounting with the cashier
4 to receive tips, while later on you changed your testimony to
5 claim Mr. Wang would give you the tips?

6 MR. SCHWEITZER: Objection.

7 THE COURT: Overruled.

8 A. What do you mean I changed my testimony? What I said was
9 that when Mr. Wang was in the front desk, so I asked him to do
10 the accounting for the tips. Do you understand?

11 Q. The customer named Mr. Wang also give cashier work when
12 he -- strike that.

13 Is that your testimony, saying Mr. Wang also did
14 cashier work when you worked in the restaurant?

15 A. Correct, correct.

16 Q. Was Mr. Wang a sushi chef?

17 A. When it's busy, he has to go make sushi, too.

18 Q. Other than Mr. Wang, who else work in the sushi bar when
19 you worked in the restaurant?

20 MR. SCHWEITZER: This is beyond the scope.

21 THE COURT: Sustained. It's also been three minutes.
22 Do you want to finish up?

23 MR. YAN: Yes.

24 Q. Do you recall someone named Joey, J-O-E-Y, would do the
25 accounting with you in the restaurant to give the tip?

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1 A. I don't know the names, but the thing is whoever is in the
2 front desk, they are the one who is going to do the account for
3 the tips.

4 MR. YAN: I finish my recross.

5 THE COURT: All right. Thank you. You may step down.

6 Mr. Schweitzer do you have any further witnesses to
7 call.

8 MR. SCHWEITZER: No, your Honor.

9 THE COURT: So Mr. Xue?

10 MR. XUE: Your Honor, I would like to move for direct
11 verdict as plaintiff presents zero evidence against my client,
12 did not even make any efforts to hold Ichiro Asian Fusion
13 responsible. Plaintiff's counsel is aware of what is going on
14 based on the affidavit submitted that they did not fully
15 translate affidavit or they did not -- fail to communicate with
16 client what's on the affidavit, or maybe they submitted perjury
17 going on here.

18 And then even before the trial started, I warned
19 plaintiff counsel, I said you better drop your case, it seems
20 like you client don't even know what my client is. But
21 plaintiff continued to push this case forward, even at the
22 redirect tried to mislead the plaintiff to give false testimony
23 to the Court, when it's clear they have no idea who my client
24 is. There's zero evidence on my client's name. This is one of
25 the most outrageous case against an unrelated party ever

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1 presented probably in this Court. So it's clear that they
2 failed to meet the Second Circuit standard of economic reality
3 test because there's zero evidence here.

4 So I move for directed verdict and will reserve my
5 right to seek sanction against plaintiffs and plaintiff counsel
6 and reserve all my clients right to file any proper legal
7 action against all these parties.

8 THE COURT: Mr. Schweitzer?

9 MR. SCHWEITZER: Three out of the four plaintiffs who
10 testified in the Li matter identified Ms. Chen as someone who
11 worked in the restaurant. One of them identified her as
12 someone who had given him tasks to do, who had substituted for
13 the lady boss and her duties. There was no subordination of
14 perjury going on.

15 THE COURT: I don't understand what happened with the
16 testimony where multiple plaintiff witnesses disavowed knowing
17 the name that was provided in the declarations. Some of them
18 indicated maybe they had seen her come into the restaurant and
19 eat, but they're not associating her with the name Jian Ping
20 Chen -- that's her name, but they're not associating her. That
21 came through loud and clear during the testimony that what was
22 contained in the declarations was not the testimony of the
23 witness with respect to the person who is Jian Ping Chen.

24 What did you understand happened there?

25 MR. SCHWEITZER: What did come through in the

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1 testimony is that the plaintiffs knew their employers by role,
2 by face.

3 THE COURT: So there's somebody who they understand to
4 be lady boss, somebody has supplied them that name, right?

5 MR. SCHWEITZER: I believe that name came out of our
6 document research, we showed it to the plaintiffs, asked if
7 that name rang true to any of them.

8 THE COURT: Multiple of your witnesses -- I don't
9 think -- well, this is correct, none of your witnesses continue
10 to maintain their testimony submitted in the declarations that
11 the person who testified in court, that person named Jian Ping
12 Chen, was the person who is identified as lady boss in their
13 declarations, right? None of them maintained that testimony.

14 MR. SCHWEITZER: That's right, they had -- this is the
15 first time they have seen her face since leaving their
16 employment. As I said --

17 THE COURT: So she is not -- is your understanding of
18 the testimony she is not the person referred to as lady boss in
19 any of the declarations?

20 MR. SCHWEITZER: My understanding is she is not that
21 particular person, but she did have an employer's role in the
22 restaurant.

23 THE COURT: What testimony was that based on?

24 MR. SCHWEITZER: That's based on testimony.

25 THE COURT: Nothing in the declarations, right? Is

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1 that right? Is there anything with respect to the person who
2 actually sat here, who has been sued, right, the defendant in
3 this case, Jian Ping Chen, is there anything in the
4 declarations submitted as direct testimony about that person?

5 MR. SCHWEITZER: No, your Honor.

6 THE COURT: Okay. And the inclusion of her name in --
7 I think this came through all this, the inclusion of her name
8 in the declarations is what appears to be a mistake in naming
9 of the person that they identified as lady boss, right?

10 MR. SCHWEITZER: Yes, the person who they identified
11 as lady boss is not her, it's somebody else.

12 THE COURT: Somebody not sued, not a current named
13 defendant in this lawsuit, right?

14 MR. SCHWEITZER: Yes.

15 THE COURT: Okay. So then let's identify -- so you
16 think that you've supplemented the declaration testimony with
17 their live testimony several -- which I think at most with
18 respect to one witness was she came in a few times, I don't
19 remember specifically, she sometimes took on the front of house
20 role. Is that it?

21 MR. SCHWEITZER: Well, three plaintiffs identified
22 her.

23 THE COURT: Mr. Schweitzer, I want you to take a
24 breath and make sure, because candidly, after, I don't know,
25 maybe 50 trials that I presided over I have never seen anything

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1 quite like what happened there. So I'm not going to make any
2 credibility determinations for the purpose of a Rule 50 motion.
3 That's ahead if you get through it.

4 I don't think the testimony played out exactly as you
5 thought because of communication issues and naming issues and
6 the like. So just make sure that you feel comfortable
7 proceeding as an officer of the Court with an obligation to be
8 candid, sometimes things don't play out as we thought they
9 would at trial, that's what happens.

10 So I want you to press for me a non-frivolous argument
11 as to what the evidence shows, without me making any
12 credibility determinations, as to the person who has actually
13 been named as a defendant, sued, and was present here, Ms. Jian
14 Ping Chen. What evidence is in front of me?

15 MR. SCHWEITZER: There are three plaintiffs who
16 identified her as being present in the restaurant, two of whom
17 identified her as performing front of the housework, one of
18 whom identified her as specifically giving him tasks to do in
19 the way that the lady boss normally would.

20 THE COURT: Okay. And you think that makes out a case
21 against her why?

22 MR. SCHWEITZER: Because if she didn't have the
23 authority to act in the way that the lady boss acted, then --

24 THE COURT: So someone who came into the restaurant a
25 couple of times, they don't remember when, they don't remember

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1 how often, they think they recognize her, and maybe she -- I
2 think one witness was more definitive, that she would sometimes
3 do the cashier work in the front of the house.

4 MR. SCHWEITZER: Not just the cashier work but also
5 give them specific tasks to do directly to perform actions.

6 THE COURT: Which witness testified to that?

7 MR. SCHWEITZER: That was Mr. Wu yesterday.

8 THE COURT: Okay. So you want me to make credibility
9 determinations as to that in light of everything that --
10 everything that happened here, you want me to make those
11 determinations to what really happened here?

12 MR. SCHWEITZER: Yes, your Honor.

13 THE COURT: You're pressing forward against Ms. Chen?

14 MR. SCHWEITZER: Yes, your Honor.

15 THE COURT: And what evidence is there in this record
16 with respect to Ichiro Asian Fusion?

17 MR. SCHWEITZER: She is admittedly the shareholder and
18 ran the Ichiro Asian Fusion for multiple years during the
19 plaintiff's employment.

20 THE COURT: What does Ichiro Asian Fusion have to do
21 with these plaintiffs? What in the record would you look to to
22 say that Ichiro Asian Fusion is connected to these plaintiffs?

23 And again, Mr. Schweitzer, I'm all for zealous
24 advocacy, but there are limits. I'm happy to hear what
25 arguments you have, but you tell me, in light of what we have

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1 just sat through for two days, what there is to connect to
2 Ichiro Asian Fusion.

3 MR. SCHWEITZER: As far as in the record, they share
4 common management, that's what is in the record.

5 THE COURT: She they're -- so you believe it's
6 established that she manages -- by her own admission, she
7 manages Ichiro Asian Fusion.

8 MR. SCHWEITZER: Yes.

9 THE COURT: And you're relying on the testimony that
10 you pointed to a moment ago, you're arguing that Ichiro Asian
11 Fusion is a responsible defendant entity merely through that?

12 MR. SCHWEITZER: Yes.

13 THE COURT: All right. I will reserve.

14 Mr. Yan.

15 MR. YAN: Your Honor, defendant Ichiro Sushi Inc. and
16 Juhang Wang make the Rule 50 directed verdict against plaintiff
17 Robert Hidalgo without evidence in favor of Hidalgo. He admit
18 that he worked in the restaurant part time. If he worked there
19 part time, with common understanding about part time --

20 THE COURT: He didn't testify that he worked there
21 part time.

22 MR. YAN: Actually during the cross he admit he worked
23 there parts time.

24 THE COURT: No, he specifically said he misstated or
25 misunderstood. I know you think it's like a deposition and you

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1 can point to that line and there isn't a live person who watch
2 the information who came in. That, of course, is what happens
3 with trials, and that's not what happened. It's not even a
4 reasonable contention as to what happened.

5 MR. YAN: Your Honor, at the end, after Mr. Hidalgo
6 was confronted with the letter he requested saying that he
7 worked in the restaurant on a part-time basis, and he was
8 questioned again, you worked in the restaurant part time
9 correct, he said yes. It's in the transcript. So it was his
10 admission he worked there part time during his testimony. He
11 could not -- that's in multiple places.

12 He could not recall his hours in the restaurant, and
13 there's certain times. It's a credibility issue, however,
14 because his admission he worked there part time and with all
15 the evidence in favor of Mr. Hidalgo, defendant Ichiro Sushi
16 and Juhang Wang make Rule 50 motion against Hidalgo to dismiss
17 this case.

18 THE COURT: His direct testimony states I always
19 worked, I always worked six days per week and always well over
20 40 hours per week.

21 MR. YAN: It was his admission during the cross and
22 recross he admit he worked there part time.

23 THE COURT: That's not what happened. It's a nearly
24 frivolous argument. Yes, there were those documents, and he
25 said that he didn't work there part time. He didn't admit

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1 that.

2 MR. COOPER: Judge, he talked about his hours on
3 cross, on redirect and in the affidavit. He work ten to ten,
4 twelve hours a day, six days a week. Yeah, he's not the most
5 educated individual. When I asked him how often you were paid
6 he said every six days because he worked six days and he got
7 paid for those six days. But he was a very credible witness.

8 THE COURT: I'm not making any credibility
9 determinations here, but the idea that you want to stand up and
10 make the argument that he admitted he worked part time and
11 that's all that I should consider for purposes of Rule 50
12 motion is bordering on frivolous.

13 MR. YAN: I can only make argument based on the
14 transcript.

15 THE COURT: Do you know what a Rule 50 motion is,
16 Mr. Yan? Am I supposed to make a credibility determination for
17 a Rule 50 motion?

18 MR. YAN: No.

19 THE COURT: Okay. And yet you think the undisputed
20 testimony is that Mr. Hidalgo worked part time. Again, take a
21 deep breath. What do you want to argue to the Court? Because
22 maybe you maybe this is lost here, but I happen to think that
23 truth in this courtroom matters, reasonable arguments and
24 representations matter, taking professional responsibility
25 seriously matters. If that hasn't been clear up to this point,

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1 Mr. Yan, Mr. Schweitzer, it will become clear. I take it
2 seriously.

3 So I'm open to a real argument, and the colloquy I
4 engaged in with Mr. Schweitzer was because we can identify, we
5 can isolate and say what exactly is the remaining evidence as
6 to the testimony or other evidence regarding Asian Ichiro Sushi
7 and Ms. Chen, because in light of what happened at court, most
8 of what had come in originally through the declarations is
9 gone.

10 That's just not what happened with Mr. Hidalgo. So to
11 the extent that's the basis for your Rule 50 motion, it is
12 denied.

13 Anything further?

14 MR. COOPER: Mr. Hidalgo asked me to ask the Court if
15 there's anything the Court can do to encourage the parties to
16 resolve this case before it goes to verdict. So I pose that
17 question, Judge. I think we have a half hour left today. I
18 don't think we should start the next witness, but I am not
19 opposed to sitting down with the Court and in conference or ex
20 parte --

21 THE COURT: It's a bench trial so I'm not permitted
22 engage in settlement discussions. So if there were some
23 openness to it, I would be happy to just call it a day for
24 today and use the time and the facilities to have a mediating
25 discussion.

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1 Is there any openness to resolving the case so
2 Mr. Hidalgo doesn't have to come back tomorrow?

3 MR. XUE: I'm not --

4 THE COURT: That's to Mr. Yan.

5 MR. YAN: Your Honor, Ichiro Sushi and Juhang Wang
6 strongly believe that it was frivolous lawsuit against Ichiro
7 Sushi and Juhang Wang because Juhang Wang knew that and this
8 witness knew that Roberto Hidalgo worked there on a part-time
9 basis, left, come back, come back, even he did not work in the
10 restaurant after October 1st, 2014, and he still claim he
11 worked there. There's a very serious credibility issue. And
12 Mr. Wang believe he did not owe this person any money. If he
13 really owed this person money, he would have paid him, however,
14 it's not the case here.

15 THE COURT: All right. Looking at your remaining
16 time --

17 MR. COOPER: I think I requested an hour for cross. I
18 would rather not begin it and finish it under the same session.

19 THE COURT: What I want to do is ensure that we're
20 going to finish tomorrow. And as I said --

21 MR. COOPER: Hopefully only the morning, Judge. We
22 only have two more witnesses.

23 THE COURT: Mr. Cooper, you have two hours and twelve
24 minutes remaining. Mr. Schweitzer has three hours remaining,
25 which I presume won't be needed, Mr. Xue has two minutes

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1 remaining, but you're done, and Mr. Yan has an hour and 15
2 minutes remaining.

3 MR. YAN: Your Honor, I have 80 minutes, but probably
4 my counting the clock was not accurate.

5 THE COURT: I said 75 minutes. An hour and 15 is 75
6 minutes. According to your clock you have what?

7 MR. YAN: I check every time I start, I counting my
8 minutes, that's what I had them all, but may I request 15 more
9 minutes on top of the 75 minutes?

10 THE COURT: No. I believe also in setting rules and
11 sticking to them. That's what is fair. What does your clock
12 say you have remaining?

13 MR. YAN: I have like 83 minutes, but --

14 THE COURT: So out of an abundance of generosity, I
15 will give you the 83 minutes. Although we have you down as
16 having 75 minutes remaining, you could have 83.

17 MR. XUE: Your Honor, may I make a request? I
18 actually wasn't planning to be here tomorrow, but if I'm
19 requested to be here, I will. May a make a request? I
20 probably only have one question for this witness, two or three
21 questions for this witness, after that may I be excused?

22 THE COURT: Yes, that's fine.

23 MR. XUE: Thank you, your Honor.

24 THE COURT: All right. I will end today now. I think
25 everybody is ready to call it a day. We'll resume at 9:30

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1 tomorrow. Mr. Yan, you have to be on time tomorrow. The clock
2 will tick if you're not here.

3 MR. YAN: Yes, your Honor, I have -- the trial began
4 about two days, I just have a 9 o'clock conference in a workers
5 compensation case at 9 o'clock. I don't know whether they will
6 call me, it's about five minutes, ten minutes.

7 THE COURT: You're going to have to move that. We're
8 starting at 9:30 tomorrow.

9 Anything else?

10 MR. COOPER: Thank you, Judge.

11 THE COURT: All right. See you tomorrow morning at
12 9:30.

13 (Adjourned to April 24, 2019, at 9:30 a.m.)
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